

Information on correspondents submitting the communication:**1. Local Committee Kućište (cro: Mjesni odbor Kućište)**

Adress: Local Committee Kućište, Kućište bb, 20267 Kućište

E-mail: mokuciste@gmail.com**2. Association for Nature, Environment and Sustainable Development "Sunce"**

Adress: Obala hrvatskog narodnog preporoda 7/III, 21000 Split, Croatia

E-mail: ivana.krstulovic.bakovic@sunce-st.org**Contact person for Communication on behalf of both Communicants:**

Ivana Krstulović Baković, LL.M., Lawyer

Tel: +38521360779

GSM: +385955659976

E-mail: ivana.krstulovic.bakovic@sunce-st.orgWEB: www.sunce-st.org

Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 2384
Fax: +41 22 917 0634
E-mail: public.participation@unece.org

SUBJECT: Communication to the Aarhus Convention's Compliance Committee regarding the non-compliance with Aarhus Convention of Republic of Croatia

On behalf of the both Communicants we are submitting the following communication.

Party concerned:

Republic of Croatia

Facts of the communication:

In the village of Perna on peninsula Pelješac (an area of Local Committee Kućište, the Municipality of Orebić) a new ferry port-Perna is planned to be built.

At this moment the EIA screening procedure has finished, and the Ministry of Environment and Energy has reached a decision that project will not likely have significant impacts on the environment and therefore there is no need to conduct an EIA.

The location of this project is planned and adopted in all relevant spatial plans, Spatial Plan of Municipality of Orebić and the Urbanistic development plan of the port Perna. The construction of this new port is planned as a relocation of the current port in Orebić, in order to reduce traffic jams in the summer months. This port serves mainly as a ferry port connecting the nearby island of Korčula. The new port is planned on a beautiful beach in the center of our village which represents the foundation of our economy and is crucial for our financial survival. Namely, most of locals live from tourism. Many development strategies and other documents point out that the beach is the basis for tourism development and tourism is the main economic branch of our municipality and county of Dubrovnik-Neretva region. This location is a worldwide well-known windsurfing destination. Just next to the planned port, at this moment there are about 600 tourist beds. Next to the port there is also a hotel "Komodor", a camp, windsurfing school and apartment complex. All this is a part of the Komodor tourist complex which has a capacity of accepting 4000 tourists. Authorities have placed a new ferry port inside of this tourist complex. Therefore, this move will irreversibly destroy our most important natural resource - the beach in the length of 220m.

The planned port is at least three times oversized. Even three ferry docks, along with the rest of the operational coast, are planned in the project. The current ports of Dominče on the island of Korčula and Orebić on the peninsula that have been operating for years, have three docks together. Therefore, **the planned port project does not comply with the principles of rational use of the natural resources.**

Here is the **data on the size** of the new port and comparison with the size of the existing port:

- The new port occupies 10,530 m² of land area, 34,952 m² of sea area and it has about 400-450 m of landline.
- The existing port in Orebić has 2,341 m² of land area, 17,378 m² of sea area and 70 meters of landline.

(You can check this information here: <http://www.ludnz.hr/port/75> and here: <http://www.ludnz.hr/port/47>)

In this sense it is important to know that **the port is being relocated from Orebić only because of the traffic jams in the summer that are present in the center of Orebić.** Therefore, the size of the existing port does not represent a problem and there is no need to build a much bigger new port. Furthermore, **the current port in Orebić will be reconstructed, enlarged and used as a port without ferry terminal.** Thus, Orebić will have **far more port capacities than it actually has and needs.** The need for the port **will diminish even more when the bridge/tunnel is going to be constructed.** Namely, County Spatial Plan is planning the construction of a bridge/tunnel that will connect the island of Korčula and the peninsula Pelješac in the future. The moment when this bridge is to be built the ferry port of Perna will lose its purpose and it will stand as a remainder of a poor natural resource management. **The environment and the beach will be irreversibly destroyed.** Furthermore, **a marina is planned on the west side of the planned port.** It will take **additional operational**

coast, occupy additional length of the beach and the two projects together will completely close the approach from the sea, south of the hotel Komodor.

II. In the Republic of Croatia all projects that are going to be built must be previously planned in the spatial plans - legal binding documents that have the legal strength of a legal act. Spatial plans are organized in hierarchy that implies that lower ranked plan must be in line with a higher one.

So, there are **county spatial plans** (the ones that are planning the territory of one county in a general manner defining different zones and purposes of the territory), **municipality spatial plans** (the ones that are planning the territory of one city/municipality in detail) and **urbanistic development plans- UDP** (the ones that are planning the territory for one special purpose in a very detailed manner).

The relevant law that was in force during the time of alleged non-compliance with the Convention was *Space Development and Construction Act (OG 76/07)*.

Further, **spatial plans in Croatia are considered as an instrument of environmental protection and in this light all the rules of public participation given by the Aarhus Convention are to be obliged in the process of development and adoption of those plans.** This is clearly stated in **Article 109. of Environmental Protection Act (OG 110/07)** that was in force at the time of alleged non-compliance:

"6. Spatial plans as an environmental protection instrument

Article 109.

(1)

Objectives related to preventing environmental pollution and limiting consequences of pollution shall be taken into consideration when preparing spatial plans and making decisions in accordance with a regulation governing spatial planning, in particular when selecting locations for new installations, establishing changes which have occurred in existing installations and planning new infrastructure such as roads, public areas and residential areas.

(2) During the preparation of spatial plans, apart from other obligations prescribed by this Act, the distance between an installation and residential areas, public places and environmentally significant areas, as well as use of additional measures by existing installations should also be taken into consideration when preparing spatial plans, all for the purpose of avoiding increased threat to human health, material assets and the environment.

Despite the obligation for competent authorities to take into consideration principles of environmental protection while planning the purpose and projects on a certain territory via spatial plans, there is a practical use of this syntagma "instrument of environmental protection" during the EIA procedures. Namely, one of the obligatory conditions for developers in order to submit a valid request for an EIA procedure is to enclose the evidence of compatibility of the planned and proposed project with the relevant spatial plans.

If this is not the case the competent authority has to dismiss the developer's request as non-valid.

For this project in question – construction of port Perna, Urbanistic Development Plan (further on: UDP) of the port Perna **was adopted in 2010. During the decision-making process** there were numerous errors regarding public participation procedures showing the **non-compliance with Article 7. and Article 6. paragraph 3, 4 and 8. of the Aarhus Convention.**

For the context of this communication, it is important to determine that during the whole process of adopting UDP for Port of Perna **the bridge/tunnel Pelješac-Korčula that is planned to be built** and has the same purpose in this territory - to connect island of Korčula and the coast (peninsula Pelješac). However, it was not mentioned at all and the cumulative effect of all these projects (both, developed and planned ones) was not assessed. It would be reasonable, **in the sense of space-saving and rational use of natural resources, to spare the existing beach on Perna Port location and plan the new port at the location of the planned bridge (or not to be built at all).**

The procedure of development and adoption of UDP Perna took place in 2009. with public hearing held on 8th of July 2009.

According to the *Space Development and Construction Act (OG 76/07)* **public consultation, including public hearing, is obligatory for the adoption of spatial plans at any level. The information about the right to participate must be published timely and effectively.**

Furthermore, in order to reach effective and well-reasoned decision the competent authority must send special notice on the public hearing to the following:

Special notice on the public hearing

Article 87.

In addition to the publication referred to in Article 86 of this Act, the holder of the drafting shall also submit a special written notice on the public hearing:

- *to bodies and persons designated by specific regulations that have submitted requests (data, planning guidelines and prescribed documents) for the development of a spatial plan within their scope of action,*
- *to bodies of units of local and regional self-government, on which scope the proposed spatial plan solutions can have an impact*
- ***to local committees, that is, urban districts for the area of the proposal of the Urban Development Plan and Detailed Planning Plan,***
- *to the owners registered in the land registry and the cadastral register in the area for which a Detailed Planning Plan of development is being prepared for the purpose of implementing the urban land consolidation.*

One of the Communicants of this complaint- Local Committee Kučište and its members are also members of public concerned. Local Committees in the Republic of Croatia are administrative-management units of municipalities/ cities established under the *Local and*

Regional Self-Government Act with aim to deal with specific communal issues on micro level as a form of participatory democracy body.

Therefore, there was an obligation for competent authority responsible for the development and adoption of a certain spatial plan to inform Local Committees about public hearing and project that is planned to be built on the territory of its jurisdiction.

Regardless this obligation Local Committee Kučište (representing locals of Kučište) **was not notified about the public hearing, therefore was not able to effectively and timely participate** in public consultation procedure during development of the UDP Perna. Consequently, **non-participation in public hearing led to denied access to the Administrative Court because all deadlines for submitting the lawsuit were expired.**

III. For the better understanding of the case in the following text there are chronologically ordered facts regarding the procedure of development and adoption of UDP Perna:

- In 1982., ex-Yugoslavia, then Municipality of Korčula (competent authority at the time), adopted the spatial plan that places a new port on the territory of Local Committee Kučište. The location of the new port was in Zamošće village right in front of our family houses and tourist facilities, around 1000m away from the current location.
- In 1988., ex-Yugoslavia, following the referendum that resulted with great majority of our citizens rejecting the previous plan, the Municipality of Korčula adopted a new plan placing the port in Perna village, again in front of our family houses and in tourist complex Komodor. The civil war followed, and our citizens had more important things to attend to and the problem was forgotten.
- In 1990-es, a new country - Republic of Croatia inherited Yugoslavian spatial plans. In 2008., it was announced that the Orebić Municipality (competent authority at this moment) is about to start making an urban planning plano of the new port in Perna. 16.12.2008., the citizens of Local Committee Kučište (cro: MO Kučište) signed the petition requesting that the port is to be planned at alternative location, either Sv. Ivan or Bilan. It was rejected.
- 31.12.2008. The Ministry of Nature and Environmental Protection reached the EIA decision that the planned port Perna is *acceptable for the environment*. Interesting fact is that in this decision it was written: *For the purpose of answering sociological questions, the author of the study made a sociological study that concluded that the population was not sufficiently informed about the project, and that it is fearful of disturbing the quality of life by realization of the project.* By this conclusion, at the time, the Ministry proved that the public was not sufficiently informed about the project.
- 05.06.2009. was the beginning of the first public hearing (cro: javna rasprava) in procedure of adoption of the mentioned Urbanistic Development Plan of the port Perna. A great number of citizens attended the debate and expressed their negative opinion about the project. On this public debate, the authorities lied to the public that the maritime studies showed that the port could not be built at alternative locations. From that point on, until a few months ago when we found the proof that no maritime studies were conducted, the public was in the false impression that the new port could be built only at a current location. Giving the false information the authorities obstructed the

public in participating in the public hearing and decision-making as stipulated in Article 7 of the Convention.

- 08.07.2009., following, for them, inconvenient result of the first public hearing, the Municipality Orebić (authority responsible for the development and adoption of the UDP) organized the second, repeated public hearing. But this time they did not send the *Special Written Notice* to the Local Committee Kućište as obliged by law. Therefore, the president of the Local Committee did not attend the public hearing, nor he could additionally inform the public in Kućište of the public hearing that is about to begin. In addition to this, by inspecting the archived documents from public hearing (held in Orebić Municipality building) it is apparent that there is no postal evidence of delivery of the Special notice to Local Committee Kućište.
- Regarding the public announcement about the beginning of the public hearing, the authorities posted only a small ad in the public papers that no one reads. This public debate went without a single citizen attending it.
- 08.04.2010., the authorities adopted the UDP of the port Perna
- In the first half of 2018., it came to public knowledge that the project of building the new port is intended to be co-funded through EU funds and that the construction work may begin as early as the next year.
- 27.06.2018., a new petition against planned port was conducted and handed over to the Municipality of Orebić. The petition was rejected with explanation that port was planned on current location in ex-Yugoslavia and that now it is too late to change it.
- 03.07.2018., the petition against the port and objection on the spatial plan was sent to the higher authorities – Dubrovačko-neretvanska County. It was rejected by similar reasons.
- 10.08.2018., due to law change, the Ministry of Environment and Energy announced that they are conducting the EIA screening procedure for the project "The construction of the port Perna". Local Committee Kućište, several citizens and Association Sunce both participated in public debate by sending the Opinion to the Ministry.
- 15.10.2018., there was a public hearing going on for the amendments of Dubrovačko-neretvanska County Spatial Plan (higher ranked plan that sets the rules for lower ones, which also means it can effect the location of this planned port) during which the Local Committee Kućište sent the opinion expressing the concerns about the location for the port Perna. It was rejected with the explanation that the UDP of Perna port is not the subject of the debate with no sufficient explanation or facts on which authority has based its decision 12.11.2018., the Ministry of the Sea, Transport and Infrastructure signed a contract with University of Rijeka to make "National Plan for Development of Coastal Maritime Transportation". This plan will include the new Perna port and thus it will be adopted at the highest national level.
- 12.12.2018., although there are no legal measures for public to influence the making of National Plan for Development of Coastal Maritime Transportation, Local Committee Kućište has sent the notice to this Ministry with explained request to exclude this port from the plan. Also, we suggested to the Ministry to include expert studies that would determine the best location for new port.

Along with the petitions listed above the communicants have sent numerous e-mails and postal mails to various national and local government bodies expressing our concerns and trying to address these issues but with no effect.

All the explanations from the authorities for rejecting communicants' demands are not sufficiently reasoned or are lacking logical explanations, as follows:

a) *The location was chosen by ex-Yugoslavia 1988.*

It doesn't make sense since the spatial planning is a dynamic process. Spatial plan is changed and adopted when change in the space or other circumstances occur. The circumstances have changed, and they have changed dramatically since 1988. (the development of space, the planned bridge, the development of tourism, the number of inhabitants, the economic circumstances, and the other).

This reason is particularly disappointing since it means that the authority, giving this explanation, thinks that the public has no right to participate in decision-making which participation is guaranteed by the law. It would also mean that the democracy principles are irrelevant too and that the authorities do not change the plan according to new circumstances.

b) *For the alternative location of Sv.Ivan there would be significant increase in driving distance.*

It doesn't make sense since the driving distance would be increased only by 3.4km (3 minutes driving).

c) *For the alternative location Bilan there would be significant increase of sea distance.*

This makes no sense since the distance by the sea would be increased by approx. 5-6km and the driving distance, by the road, would decrease by 10km.

We would also like to highlight that **the authorities are giving the reasons such as the increase in sea distance or increase in driving distance without giving the concrete numbers of the increase.** The fact that our authorities did not even measure the distances, which is a very simple thing to do, is very disturbing since that means that they disrespect the experts and methodical approach in spatial planning. Instead they are prone to make decisions based on someone's rough, unreliable assertions and conclusions.

However, **the alternative locations (Sv. Ivan and Bilan) have numerous advantages over the currently planned location in Perna.**

For each location the advantages are:

- Location Sv. Ivan:

It is completely protected from the most problematic wind - Jugo. It is located at the same site as the planned bridge. Building the port here would spare the precious coast from overbuilding. All the infrastructure would be brought and used again for the planned bridge. It is not in the inhabited area so it would not degrade the quality of life of people nor it would degrade the tourist resorts.

- Location Bilan:

It is located further, down the route where most of the road traffic is going. By building the port on this location the driving distance would be 10 km less than the distance for currently planned location in Perna.

It is not in the inhabited area, so it would not degrade the quality of life of people nor it would degrade the tourist resorts.

Additionally, UDP of Ferry Port Perna has not been revised in terms of newly-established legal circumstances regarding to international treaties that are under the Constitution of the Republic of Croatia "above the law". Namely, the **Port of Perna project is incompatible with the "Protocol on integrated coastal zone management in the Mediterranean"** relating to the principle of sustainable development and the principle of rational use of space and natural resources.

Nature of alleged non-compliance:

The above-mentioned procedure of development and adoption of UDP of Port Perna was not in compliance with:

Article 7 regarding Article 6 paragraph 3 of the Convention since the **key group of the public most directly affected by this plan was not informed** about public participation procedure and deadlines of public hearing regarding the adoption of UDP of Port Perna and **was not invited to participate in the procedure** in accordance with Croatian laws via Special Notice to the Local Committee Kučište (*Article 87. Space Development and Construction Act OG 76/07*).

Decision of ACCC in paragraph 24 of the case *Kazakhstan ACCC/C/2004/2; ECE/MP.PP/C.1/2005/2/Add.2; 14 March 2005* reads that if a **key group of members of the public most directly affected by the activity was not informed of the process and not invited to participate in it** (in this case Local Committee Kučište) it follows that they **did not received notice in "sufficient time"** as required under **article 6, paragraph 3**, and that in practice they did not have the opportunities for early and effective participation that should have been available in accordance with paragraph 4 or to provide input in accordance with paragraph 7.

Article 7 and Article 6 Paragraph 4 of the Convention because **all public was not given the right to participate under the equal and clear legal framework based on timely and accurate information** (see point before) since Local Committee Kučište was not invited to participate in the public hearing as it is obliged by law. Accordingly with the Decision of ACCC as stated in paragraph 51 of *European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008* within each and every procedure, **where public participation is required (accordingly with the provisions of domestic laws- in this case for these participants by sending special notice on the public hearing)**, it should be provided early in the procedure when all options are open and effective public participation can take place.

Article 7 regarding Article 6 paragraph 8 of the Convention because **the result of the public debate could not be considered effectively since key group of the public most directly affected by this plan was not informed nor any member of this key public participated in the public hearing**. This has a consequence that reached decision of competent authority lacks the part regarding the discussion of how the public participation was taken into

account (Spain ACCC/C/2008/24; ECE/MP. PP/C.1/2009/Add.1, 90 September 2010, para. 100) which makes it not in line with the Aarhus Convention. At this point it is important to emphasize that in Croatia exists trend of not taking into consideration comments of the public during decision-making procedures regarding environment or simply not accepting any comment given with generic line "The comment is not accepted" without explanation. The communicants have reasonable doubt that even if the comments have been timely given that they would not been taken into consideration whatsoever (in accordance with ACCC Decision in case Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010. Para. 101 this kind of system of decision making does not comply with the Aarhus convention)- since this seems like an assumption with no evidences, we can provide additional information and evidences if needed later in communication.

As a general non-compliance with the goals and mission of Aarhus Convention we would highlight the fact that Croatian authorities, in the sense of public participation in decision-making process, are just satisfying the form. Instead, the authorities should actively push public hearings with a sincere desire to listen the opinion of the public. This is a huge and wide-spread problem regarding public hearings. The Croatian authorities, generally, do not take real effort to ensure public participation in the public hearing. In order to make the information available to the public effectively, the information should reach the public concerned in a comprehensible and efficient manner. For example, a small ad in local newspapers published among other ads should not be considered effective notification (as it was in this case). Discretionary powers of the authorities to choose the means of informing the public generally falls to the minimum requirements prescribed by national legislation, which is not in accordance with the principles of the Aarhus Convention.

Involving citizens in decision-making is one of the basic characteristics of democratic societies and a fundamental condition for sustainable development. In order to be able to participate, citizens should be given access to information. However, although the regulations provide opportunities for public participation in decision-making and citizens are given the opportunity to express their views, these opinions are generally not respected.

Use of domestic remedies:

Except what we listed under the Facts of the communication, no other domestic procedures have been invoked to address the case and there are no other domestic remedies available since the legal time frame has passed from the time the UDP Perna was adopted. The possibility of appeal against a decision is time-limited, and the deadline runs from the date of publication on the web site.

UDP of ferry Port Perna is not in line with many articles of the *Space Development and Construction Act (OG 76/07)*, Art: 07, 08, 09, 10, 11, 12, 13, **86**, **87**, 92 and 96, that was in force at the time.

The act can be seen here: https://narodne-novine.nn.hr/clanci/sluzbeni/2007_07_76_2395.html

The communicants cannot prove this irregularity before the court since the deadline for court appeal has expired. Furthermore, the costs for any other court appeal are too high for the communicants who are members of the local self-governing body without their own budget. The Municipality of Orebić, which this Committee is part of, does not support communicants in this matter.

Use of other international procedures:

Except for Aarhus Convention Compliance Committee, no other international procedures are available.

Supporting documentation:

1. The first public hearing in the process of adopting the UDP of the port Perna.
2. The document that proves that there were no expert studies conducted to show the possibility of port construction at the alternative locations.
3. The second (the last) public hearing in the process of adopting the UDP of the Port Perna.
4. The document that proves there is no postal returnee to prove that the notice was delivered to Local Committee Kućište.
5. Our objections and the answers from the authorities on spatial plan from 2018. The latest Reports from public hearing. (Essential, since it comprises nonsense statements as the reasons for rejecting the alternative locations, such as "the significant increase in the distances to the alternative locations". It neglects all our other arguments such as the distance to our houses, noise problems, planned bridge, negative effects on tourism, historic site of Old town of Korčula, etc).
6. The graphic with the locations of the existing ports, planned ports, alternative locations, Old town of Korčula, spatial plans, etc. (Essential, since it is the proof that the alternative locations are not that distant to significantly increase either driving distance or the distance by the sea. In addition, this is essential to prove how close the planned port is to historical site of Old town of Korčula or our family houses and hotel Komodor).
7. Referendum from the last half of 80ies in which the local people rejected the idea of new port. (Just the first page)
8. The first petition sent on 16.12.2008. to Orebić Municipality asking to relocate the port. (Just the first page)
9. An act of Orebić Municipality adopting the Urban Development Plan of the Port Perna 2009.
10. An act of Orebić Municipality adopting the current Spatial Plan 2018.
11. A new petition against the port that was sent to the authorities. (Just the first pages of:
 - a. The petition for the tourists and
 - b. The petition for the locals).

On the behalf of Communicant AD 1)

OPŠTINA OŠTRICA
MJEŠTNA ODREDA
KRIŽEVCI

Vanja Šestanović

Signature: 

On the behalf of Communicant AD 2)

Ivana Krstulović Baković, LL.M.

Signature: 

UDRUŽENJE ZA PRIRODU, OKOLIŠ I ODŽIVNI RAZVOJ
sunce
SPLT

Andrea Gizdić, LL.M.

Signature: 