

STATEMENT OF THE COMMICANT ASSOCIATION SUNCE SPLIT

Case: PRE/ACCC/C/2020/175 (Croatia)

Dear members of the Committee and Secretariat, dear colleagues from the Ministry,

It is a great pleasure to participate once again in this procedure, not because we enjoy calling upon our country before international bodies, rather because we have an opportunity to raise awareness, of both public and authorities, about the importance of effective implementation of Aarhus Convention.

Namely, the main reason why we are raising this issue is to point out that if the interested public has been given the right to participate in the early stage, which was also obliged by the law, we would not be facing the situation where public has the only opportunity to give its opinion about the project of ferry port Perna in the EIA screening procedure. EIA screening procedure ended with public having won a case before Administrative Court in Split concluded with a verdict stating that the project of construction of the ferry port Perna at this moment is not acceptable for the environment and must undergo EIA. The link between this project and the procedure of adoption of spatial plan UDP Perna, as we have pointed out in our Communication, is the fact that UDP was adopted to enable the construction of this project in the environment.

Further on, after receiving the questions from the Committee, it seemed that there is a concern whether Local Committee such as Kućište is “public” within the meaning of Article 2. Paragraph 4 of the Convention. We hope that the Committee has been provided with enough information regarding this issue in our respond. However, we would like to use this opportunity to refer to the findings of this Committee in case *European Union and United Kingdom ACCC/C/2012/68; ECE/MP.PP/C.1/2014/5, 13 January 2014, paragraph 81 and 83*. The same criteria that this Committee has used for determination of community councils in Scotland as members of “public” within the scope of Aarhus Convention can be applied to the case of LC Kućište. Namely, LC has no regulatory decision-making functions but only duty to represent the view of the community regarding issues that can foster the quality of life of its members. Also, LC members are providing their services on voluntary basis and the LC depends on the budget of the local authority.

Having said all the above, our legal opinion is that LC falls under the definition of “public” as provided in Article 2, Paragraph 4. of the Convention and therefore regarding this condition we strongly believe our Communication should be considered as an admissible.

In conclusion, I am pleased to briefly answer questions that have raised during the hearing:

1) Why the communicants haven't used the right to send the Communication to the ACCC in 2008?

The first and main reason for this is because members of LC Kućište were not aware of their right of submitting the communication from the public to the ACCC. They were only aware of the fact that the adoption of the plan meant that in the future they can expect the EIA procedure for this ferry port, and they reacted once the information about EIA screening procedure was published in July 2018. This was also the moment when they decided to contact the other Communicant, Association Sunce Split.

Lawyers from Sunce suggested that this project can also be tackled by starting a formal Communication from the public to the ACCC regarding the issues of public non-participation during the adoption of UDP Perna. Both Communicants decided to wait for the decision of the Ministry in EIA screening procedure, in which they have participated by giving their opinion in given timeframe, in order to decide whether or not to submit this communication and the lawsuit before Administrative Court in Split. This strategy was decided based on the previous circumstances of planning and construction of this project. Namely, as we stated in our Communication, the planning of this project has started in 1982. and was a subject to several political changes. To this day a lot of other projects related to the transport in this area were planned or even constructed so we decided it is reasonable to wait for the decision of the Ministry in EIA screening procedure before we start to raise this issues in more serious and formal ways. Since the Ministry reached the decision that this project is acceptable for the environment Communicant LC Kućište decided to challenge the decision before the Administrative court in Split by submitting the lawsuit. As we stated earlier, since we are aware that the public authorities do not seem to be aware of the importance of effective public participation, we decided to start this Communication to avoid any future situations similar to this one.

2) According to the members of the Communicant LC Kućište, Local Committee was established by the decision based on the Statute of Municipality of Orebić right after the civil war ended (1995), but we do not have the exact date or document at this moment. We will submit the Request for information to the Municipality of Orebić and inform the Committee as soon as we are provided with the information. The earliest available domestic legal act prescribing the possibility of establishment of such local committee is Constitution of the Republic of Croatia from 1990. and Local and Regional Self-Government Act from 2001.

3) Regarding the use of domestic legal remedies, Communicants want to emphasize that there were two possible ways to tackle this plan:

- by submitting a general lawsuit (Article 146. of Environmental Protection Act 2007) stating that a certain personal right was violated by this act – UDP Perna. In this case the deadline of 30 days is imposed from the date this act was published. Since LC Kućište was not aware of the adoption of the UDP Perna they could have not reacted in that given timeline.

- by submitting a request to the Administrative court asking for assessment of the legality of this general act - UDP Perna. The important condition for submitting this request is that a person who asks for such assessment must hold a single act on their name arising from this general act UDP Perna. In practice that could be a construction permit. This condition hasn't been met or could it ever be met since LC Kućište is not empowered to submit a request or obtain such a single act based on the request. Only Municipality is empowered for such actions.



Kind regards,

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