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Case Summary posted by the Task Force on Access to Justice

Coalition for Nature and Cultural Heritage Protection v. Riga City Council, No.2007-11-03 Freeport of Riga

1. Key issue	Right to live in a favourable environment - access to justice granted to individuals, as well as associations and groups of persons.
2. Country/Region	Latvia
3. Court/body	Constitutional Court (Satversmes tiesa)
4. Date of judgment /decision	17 January 2008
5. Internal reference	2007-11-03
6. Articles of the Aarhus Convention	Art. 2; Art. 9. paras. 3, 4
7. Key words	The public concerned, access to justice, environmental impact assessment, manifest procedural defect, review procedure

8. Case summary

An association claimed that part of the Land Use Plan regarding the territory of the Freeport of Riga was contrary to Article 115 of the Satversme [Constitution] of the Republic of Latvia.

Article 115 of the Satversme provides: "The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment."

According to the Constitutional Court, Article 115 of the Satversme *a priori* does not provide for preservation of the existing environment and does not prohibit realization of projects related to economic interests. Article 115 of the Satversme, on the contrary, requires a balanced and responsible amelioration of the surrounding environment, which includes guaranteeing suitable living conditions, as well as public well-being. However, Article 115 of the Satversme precludes realization of economic interests if the impact of economic changes on the environment is not assessed and consequently – the impact on each individual, as well as if society is not convinced about the necessity of changes.

The Court came to a number of conclusions.

Article 115 of the Satversme not only confers on a person the right to live in a benevolent environment, but it also obliges the public authorities, including local governments, to ensure implementation of these rights.

Any individual, as well as association and group of persons is entitled to address the Court in order to challenge compliance of a land use plan or a part thereof with Article 115 of the Satversme.

Non-performance or inadequate performance of a strategic assessment in cases when such assessment is an indispensable part of the process of adoption of the planning document may qualify as manifest procedural defect.

In case the implementation of a planning document may significantly affect the *Natura*

2000 territory, the legislator has established a requirement to perform a strategic assessment irrespective of the rank of the planning document in the hierarchy of planning documents. Therefore, manifest procedural defect is done by granting authorisation to the Contested Plan before the effects of its implementation on the *Natura 2000* sites located in the respective territory and in its vicinity has been assessed.

Moreover, the Court found that the applicable law does not confer rights to a local government to delegate its competence of land use planning to the Freeport of Riga Administration.

One of the most important assignments of a local government during the process of drafting a land use plan is to ensure the balance of different interests. Therefore, the fact whether the defects made during the process of territorial planning will be eliminated as soon as possible depends on cooperation between of the local government and institutions of the State administration as well as on effective and diligent performance of the functions entrusted to them by law.

When working on the Contested Plan, the procedure of obtaining and evaluating the necessary opinions was not observed.

Consequently, the Court held, *inter alia*, that the Contested Plan was invalid as from the date of coming into force.

9. *Link address*

<http://www.satv.tiesa.gov.lv> ; the judgment is also available in English.