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## ***Case Summary posted by the Task Force on Access to Justice***

### **Gruba et al v. Jurmala City Council, No.2008-38-03 Jurmala Regulations**

1. Key issue	Environmental information and public participation - The right to live in favourable environment; access to justice granted to individuals before the Constitutional Court contesting the violation of public participation rights; public opinion has to be considered.
2. Country/Region	Latvia
3. Court/body	Constitutional Court (Satversmes tiesa)
4. Date of judgment /decision	6 July 2009
5. Internal reference	2008-38-03
6. Articles of the Aarhus Convention	Art. 7; Art. 9, para. 2, in connection with art. 7/plans
7. Key words	Public Participation in Decision-making Process – Right to Live in a Favourable Environment – Access to Environmental Information

#### **8. Case summary**

Eight individuals contested two decisions of the Jurmala City Council that amended the Territorial Planning of Jurmala before the Constitutional Court. The individuals claimed that the decisions violated their rights established by art. 1 and 115 of the Constitution of Latvia ('the Satversme').

Art. 115 of the Satversme reads: 'The State shall protect the right of everyone to live in a favorable environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment'.

The Constitutional Court recalled art. 1 of the Stockholm Declaration (1972) and art. 1 of the Aarhus Convention and stated that the right to live in a favourable environment represented, *inter alia*, the right to live in an environment which does not endanger human health and well-being. The Court also recalled its statement (case of 21.12.2007. No 2007-12-03, para. 13) and restated that art. 115 of the Constitution defines both an individual's right to obtain environmental information and to participate in environmental decision-making. Art. 115 also obliges public authorities to ensure that these rights are protected.

The Court stated that since the municipality possessed the discretionary power to define territorial planning and solutions for development, it was also required to assess the impact of such plans on the environment and on the well-being of the public.

In assessing the adoption procedure of contested decisions, the Court evaluated the material on public participation (report), which expressed negative opinion of the majority of the public. The Court stated that there is no evidence in the decisions of the municipality that opinions of the public had been appropriately assessed. Accordingly, the Court concluded that such a report on public participation might not be considered in compliance with the requirements of the Rules on Planning (Government Regulation No. 883/2004) as it was not sufficient to only formally hear the public opinion, but also to duly take it into account. In the Court's view, the decisions on

territorial planning should include an assessment of the public's opinion and the reasons that proposals submitted by the public have been either accepted or refused. The Court concluded that the municipality of Jurmala had violated the legislation on territorial planning with regard to public participation and that although a public hearing had occurred, the contested decisions did not include any assessment of the proposals submitted by the public.

In assessing the essentiality of the violation of procedural requirements of legislation on territorial planning in connection with the breach of art. 115 of the Satversme, the Court stated that by failing to appropriately assess the need to preserve biological diversity and consider the public opinion on proposed solutions for land development, the municipality had breached the legislation on territorial planning and thus violated art. 115 of the Satversme.

Additionally, the Court concluded that the municipality of Jurmala had breached art. 1 of the Satversme which safeguards the principle of democracy, as it had not ensured adequate public participation and had decided to amend permitted use of territory without considering the substantial interests of the public, thus infringing upon the principle of democracy established by art. 1 of the Constitution. Consequently, the Court found that the contested decisions were in breach of the Satversme and thus null and void.

9. <i>Link address</i>	<a href="http://www.satv.tiesa.gov.lv">http://www.satv.tiesa.gov.lv</a> ; the judgment is also available in English.
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