

Colloquium 2006

Case-study combining aspects of project planning and European environmental law

Answers of the Supreme Administrative Court of Lithuania

1. Administrative consent procedure

Project planning in Lithuania is regulated by a number of specialized laws and includes various competent institutions, which makes it difficult to give a short generalized outline of applicable administrative consent procedure. Thus the administrative consent procedure will be described taking into account the given case – that is planning of a new motorway.

According to the Law on Roads of the Republic of Lithuania¹, the described motorway will be classified as a road of national significance, which means that it shall belong to the State by the exclusive right of ownership and shall be managed, exploited and disposed in trust by State-owned enterprises established by the Ministry of Transport and Communications or the Lithuanian Road Administration at the Ministry of Transport and Communications (a state enterprise which is in charge of state roads).

The Lithuanian Road Administration at the Ministry of Transport and Communications shall also:

1. carry out the functions of the client of designing, constructing, building, reconstructing, repairing and maintenance of roads of national significance;
2. carry out the functions of organizing the designing, constructing, building, reconstructing, repairing and maintaining of roads of national significance;
3. control that roads of national significance would be designed, constructed, built, reconstructed, repaired and maintained only by the persons meeting the requirements stipulated in legal acts.

Roads in Lithuania are designed on the basis of the approved documentation of territorial planning. According to the Law on Assessment of the Effects of Planned Economic Activities on the Environment of the Republic of Lithuania², *environmental impact assessment* for building new motorways is compulsory. Documents of territorial planning and technical projects can be presented

¹ Law of 11th of May 1995 No. I-891

² Law of 15th of August 1996 No. I-1495

for coordination and approval only after environmental impact assessment is carried out and decision to permit such economic activity is made.

Responsible institution in the procedure of environmental impact assessment is Ministry of Environment or other institution, authorized by the Government. Subjects of environmental impact assessment (institutions, analyzing programmes and reports of environmental impact assessment and presenting conclusions according to their competence) are state institutions, responsible for health protection, protection from fire, protection of cultural values, agricultural development, development of economy, and municipal institutions.

Programme of environmental impact assessment should be presented to the subjects of environmental impact assessment which have to analyze it in 10 working days and present conclusions to the drafter of documents of environmental impact assessment. Community must also be informed about the programme. Afterwards the programme with conclusions is presented to the responsible institution, which has to approve it in 10 working days from the day of its receipt.

Report on the environmental impact assessment, prepared in accordance with the mentioned programme, is also presented to the subjects of environmental impact assessment which have to analyze it in 20 working days. Reasoned suggestions of the members of the society must be evaluated. Report with the conclusions and evaluation is then presented to the responsible institution, which in 25 working days passes the reasoned decision whether the planned economic activity is permitted or presents reasoned request to amend or supplement the report. Decision to permit planned economic activity is effectual 5 years starting from the day of public pronouncement.

According to the Law on Territorial Planning of the Republic of Lithuania³ and Rules on Preparation of Special Plans for the Means of Communication, approved by the Order of Minister of Communication and Minister of Environment of the Republic of Lithuania⁴, *the process of special planning for the means of communications (including roads) comprises of:*

- 1) preparatory stage;
- 2) stage of drafting of documentation of territorial planning;
- 3) stage of appraisal of the consequences of project solutions;
- 4) final stage.

During the *preparatory stage* the organisers of territorial planning must prepare the programme of planned tasks, publicly enounce about the decision to start the drafting of plans and aims of

³ Law of 12th of December 1995 No. I-1120

⁴ Order of 12th of November 2004, No. 3-520/D1-5

planning. They must also apply to the correspondent public institutions (competent institutions depend on the level of territorial planning – for the national planning it is Ministry of Transport and Communications, Ministry of Environment, Ministry of Culture, etc.) for the preparation and issue of special planning conditions. Special planning conditions must be issued in 20 working days starting from the day when the application was received. Special planning conditions are valid during the term of preparation of planning documents, which in no case may exceed 3 years.

If according to the Law on Assessment of the Effects of Planned Economic Activities on the Environment environmental impact assessment is compulsory (which is in the given case) and environmental impact assessment was not carried out before the planning procedure, it must be carried out during the procedure of preparation of planning documents.

Stage of appraisal of the consequences (positive and negative) of project solutions starts after the draft of planning document is finished before the submission of planning solutions for coordination. It ends with the preparation of correspondent report.

Final stage consists of consideration and coordination of planning document (consultations or public consideration, coordination with responsible institutions), resolution of disputes and confirmation by the institution responsible for the supervision of territorial planning. Planning solutions are coordinated with institutions which have issued special planning conditions and other institutions provided by laws. Consentaneous planning document is presented to the institution responsible for the supervision of territorial planning for confirmation.

Institution responsible for the supervision of territorial planning (in the given case it would be State Territorial Planning and Construction Inspectorate at the Ministry of Environment) must present the inspection act to the organizer of territorial planning in 20 working days starting from the day when territorial planning document was presented for confirmation. Institution responsible for the supervision of territorial planning verifies whether the solutions of territorial planning document are in conformity with the special planning conditions, Law on Territorial Planning and other legal acts, whether all the necessary procedures were carried out duly.

If the inspection act is positive, organizer of planning presents the act for approval. Territorial planning documents of national level are approved by the Ministry of Communication or institution authorized by it, of regional level – by the county governor. Approved plans are registered in the state register. Decision on the approval of territorial planning document of national or regional level is published in the Official Gazette and comes into effect next day after publication, unless a later date is indicated in the decision itself.

2. Public involvement

a) Public involvement procedure in the sphere of territorial planning in Lithuania is regulated by a number of laws, first of all Law on Territorial Planning and Regulations on the Public Participation in the Procedure of Territorial Planning, approved by the Government⁵. Possibility for the members of public to participate in territorial planning of municipal level is also mentioned in the Law of Local Self-Government of the Republic of Lithuania⁶, which defines participation of the population in the management of public affairs of a municipality as one of the principles of local self government. Obligation to consult members of publics also derives from the provisions Law on Public Administration of the Republic of Lithuania⁷, Article 7 of which provides that on the issues relating to decisions of administrative regulation, which concern general legitimate community interests and affect a large section of the community, public administration institutions must consult organizations representing the interests of an appropriate section of the public (associations, trade unions, public organizations, representatives of other NGOs) and in cases provided for by law - with the population as well.

b) According to the Regulations on the Public Participation in the Procedure of Territorial Planning, publicity of territorial planning is ensured by the following procedures:

1. Informing the community about the beginning of preparation of territorial planning document and aims of such planning, informing about whether the strategic assessment of the effects of such planning on the environment will be carried out.
2. Consultations with the interested community (when preparing documents of territorial planning of national and regional level):
 - 2.1. Consultations on drafted solutions, presentation of solutions drafted during the stage of preparation of concept of territorial planning documents, report on the strategic assessment of their effects on the environment;
 - 2.2. Announcement in mass media about the prepared territorial planning document, method of acquaintance with it, place and time of public exposition;
 - 2.3. Introduction of prepared solutions of territorial planning document and report on evaluation of its effects, public exposition, final meeting – conference;
3. Public consideration (when preparing document of territorial planning of district and local level):
 - 3.1. Announcement in mass media about the procedures of public consideration;

⁵ Resolution of 18th of September 1996, No. 1079

⁶ Law of 7th of July 1994, No. I-533

⁷ Law of 17th of June 1999, No. VIII-1234

3.2. Presentation of solutions drafted during the stage of preparation of concept of territorial planning documents, their alternatives and report on the strategic assessment of their effects on the environment;

3.3. Presentation of prepared solutions, report on the assessment of their effects, other assessments, public exposition;

3.4. Public meeting;

Organizer of territorial planning must announce in mass media about the procedures of consultation and public consideration not later than 10 days before their beginning, identifying also the place and time of such procedures.

Members of the community may present written proposals on the document of territorial planning during all the process of preparation of territorial planning document. Organizer of territorial planning must register all the proposals, together with the drafter of territorial planning document analyze, estimate them, and take the decision to accept or decline proposals. Organizer of territorial planning is also obliged to answer in written to the person who has provided proposals on the document of territorial planning in 10 working days starting from the day of public meeting or the day of consideration of proposals, stating the reasons why the proposals were declined if it was so. A person whose proposals were declined can appeal against this decision to the institution responsible for the supervision of territorial planning (in the given case – to the State Territorial Planning and Construction Inspectorate at the Ministry of Environment) in one month from the day when the written response was sent. Institution responsible for the supervision of territorial planning must answer in 20 working days. This answer can be appealed against to the administrative court.

Planning document can be presented to the institution responsible for the supervision of territorial planning for confirmation only after the mentioned terms for appeal expire.

After the procedures ensuring the publicity of territorial planning, the organizer of territorial planning must prepare the resumptive material, which must be submitted to the institutions responsible for coordination of planning document and institution responsible for the supervision of territorial planning together with the planning document.

Lithuania has ratified the Convention on Access to Information, participation of the community in decision-making processes and access to justice on environmental issues (Orhus Convention)⁸ in 2001. Procedure of participation of community members, provided for in the Law on Assessment of the Effects of Planned Economic Activities on the Environment and Order of Participation of

⁸ Law of 10th of July 2001, No. IX-449

Community Members in the Procedure of Assessment of the Effects of Planned Economic Activities on the Environment, approved by the Minister of Environment⁹, are in conformity with the provisions of the Convention.

c) No. However, it may be in some cases taken into account by administrative court when deciding the reasonableness of a claim.

3. Judicial Process

According to the Law on Territorial Planning and Regulations on State Supervision of Territorial Planning and Construction, approved by the Government¹⁰, appeals against the violations of procedure of territorial planning are heard by institutions responsible for the supervision of territorial planning according to their competence. The State Territorial Planning and Construction Inspectorate at the Ministry of Environment or National Land Service under the Ministry of Agriculture hear appeals only after they were heard by the County Governor according to its competence and the applicant disagrees with the decision. Thus the preliminary extrajudicial investigation of disputes related to territorial planning is compulsory¹¹.

Appeals are heard by institutions responsible for the supervision of territorial planning according to the procedure determined by the Law on Public Administration. Unless the law provides otherwise, the consideration of an appeal may not last longer than 30 days. The time period may be extended by agreement between the parties. In the event of disagreement disputes shall be resolved in the Administrative Disputes Commission.

Decisions of institutions responsible for the supervision of territorial planning may be appealed against to the regional administrative court according to the Law on Administrative Proceedings of the Republic of Lithuania¹². According to the Article 32 of the mentioned law, the decision of an institution for preliminary extrajudicial investigation of disputes, adopted after investigating an administrative dispute in accordance with the extrajudicial procedure, may be appealed against to the regional administrative court within 20 days of the day of receipt of the decision. If the institution for preliminary extrajudicial investigation of disputes fails to consider the complaint/petition within the prescribed time limit, the complaint/petition may be filled within two months from the day by which the decision ought to have been taken.

⁹ Order of 15th of July 2005, No. D1-370

¹⁰ Resolution of 16th of June 1997, No. 370

¹¹ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. AS(3)-328/2004

¹² Law of 14th of January 1999, No. VIII-1029

According to the Article 71 of the Law on Administrative Proceedings, the administrative court may, upon a motivated petition of the participants in the proceedings or upon his/its own initiative, take provisional measures in order to secure a claim. Provisional measures may be taken at any stage of the proceedings if failure to take provisional measures to secure a claim may impede the enforcement of the court decision or render the decision unenforceable. Provisional measures may be as follows:

- 1) granting an injunction restraining the respondent from certain actions;
- 2) stay of execution under the writ of execution;
- 3) suspension of validity of a contested act.

Law on Administrative Proceedings provides for the very strict time-limits for hearing the case at regional administrative court. As a rule the preparation of administrative cases for hearing must be completed within one month from the day of acceptance of the complaint. The hearing of the case in the regional administrative court must be completed and the decision must be adopted in the court of the first instance within two months from the day of issuance of the ruling to hear the case in the court.

Decisions of regional administrative courts may be appealed against to the Supreme Administrative Court of Lithuania within fourteen days from the pronouncement of the decision. There are no time limits set for hearing of cases at the Supreme Administrative Court, but in practice it lasts up to 3-5 months. As procedure before the Supreme Administrative Court of Lithuania is ordinary appeal on facts and law, application to the Supreme Administrative Court of Lithuania suspends the validity of appealed judgment of regional administrative court.

4. Standing

a), b) According to the Article 5 of the Law on Administrative Proceedings, every interested entity shall be entitled to apply to the administrative court, in the manner prescribed by law, for the protection of his/her infringed or contested right or interest protected under law. The court shall accept an administrative case for consideration:

- 1) on the complaint or petition of the person or his representative, applying for the protection of his right or interest protected under law;
- 2) on the petition for the protection of the rights of other persons lodged by the institutions or agencies specified by laws or by the employees thereof;
- 3) on the petition for the protection of state or other public interests lodged in the cases established by law by the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons;

4) on the petition for the protection of the rights of municipalities in the sphere of public administration; lodged by municipal institutions, agencies, services

5) in the cases established by law, on the petition for the resolution of administrative disputes lodged by entities of public administration.

According to this rule, all the mentioned plaintiffs (natural person, municipality, agency or association (whether domestic or foreign)) have standing before national courts of Lithuania. However, it must be taken into account that the procedural laws of Lithuania as a rule require personal legal interest of a plaintiff. Possibility to claim violation of public interest or interests of other persons in courts is limited (see answer to question 5 for more details).

5. Scope of claims

As a general rule, a person is only entitled to apply to the administrative court claiming the infringement of his/her individual rights or legal interests (Article 5 of the Law on Administrative Proceedings).

Exception to this general principle is possibility to apply to administrative court for the protection of the public interest. According to Articles 5 and 56 of the Law on Administrative Proceedings, in the cases established by law the prosecutor, the entities of administration, State institutions, agencies, organizations, services, or natural persons may apply to the court with a petition for the protection of the public interest or protection of the rights of the state, municipality and persons as well as the interests protected by laws. However, as this possibility is an exception, in national judicial practice it is explained very strictly, emphasizing that authorization to protect public interest must be directly provided for by law. In one of its Rulings the Supreme Administrative Court has stressed that: *“The mere fact that it is repeated twice in the Law of Administrative Proceedings that public interest is protected only by institutions provided for by laws and only in cases provided for by laws certifies that it is an express and deliberate intention by the legislator¹³”*.

The concept of “public interest” is not clearly defined neither in the Law on Administrative Proceedings, nor other national laws of Lithuania. According to the practice of the Supreme Administrative Court of Lithuania, “public interest” must be understood as something what is objectively important, necessary and valuable for all the society or its part.¹⁴ Protection of

¹³ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A³-11/2004

¹⁴ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A³-11/2004

environment, as constitutional aim¹⁵, is recognized as public interest in practice of the Supreme Administrative Court of Lithuania. Rational use of a territory, as principal aim of territorial planning, was also recognized as public interest.¹⁶

Law on Associations of the Republic of Lithuania¹⁷ does not directly provide for the possibility of associations to protect public interest in courts. However, as the Supreme Administrative Court has noted in several rulings that a right of associations to protect public interest in the sphere of environmental protection derives from the provisions of Orhus Convention. Explaining the content of environmental protection as public interest the Supreme Administrative Court refers directly to the Orhus Convention and has ruled several times, that interested associations, functioning according to national laws, have a right to defend public interest by applying to administrative court in the sphere of environmental protection.¹⁸ However, list of environmental components, given in the Orhus Convention, in practice of the Supreme Administrative Court of Lithuania is regarded as finite. For example, the right of such organizations to defend cultural heritage was not recognized by the Supreme Administrative Court.¹⁹

When organizations, services, or natural persons apply to the court with a petition for the protection of the public interest and such a right of those persons is not clearly fixed in the law, administrative court must refuse to accept the claim, or, if such circumstances emerge when the case is already started – leave the claim untried (Articles 37 and 103 of the Law on Administrative Proceedings).

In cases when the claimant – interested association, provides to the court both arguments concerning environmental protection and arguments not directly related to environmental protection (e.g. related to protection of cultural heritage), and it is impossible to separate arguments not related to environmental protection to individual case and leave the claim in this case untried, administrative court must try the case in full but leave the arguments which are not related to environmental protection unanswered.²⁰

5. Scope of Judicial Review

¹⁵ Article 53 of the Constitution of the Republic of Lithuania provides that the State and each person must protect the environment from harmful influences.

¹⁶ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(5)-63/2003

¹⁷ Law of 14th of March 1994, No. I-1231

¹⁸ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(5)-63/2003; Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(7)-720/2004.

¹⁹ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(3)-11/2004; Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(5)-812/2004

²⁰ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(3)-11/2004

Administrative courts in Lithuania are entitled to review lawfulness of planning decision in every substantive and procedural respect. However, according to the Law on Administrative Proceedings, administrative courts shall not offer assessment of the disputed administrative acts and acts (or omission) from the point of view of political or economic expediency and shall only establish whether or not there has been in a particular case a violation of a law or any other legal act, whether or not the entity of administration has acted within the limits of its competence, also whether or not the act (action) complies with the objectives and tasks for the purpose whereof the institution has been set up and vested with appropriate powers.

Decision of administrative court also as a rule can not replace the decision of administrative authority. According to the Article 88 of the Law on Administrative Proceedings, upon hearing the case, the administrative court shall adopt one of the following decisions:

- 1) to reject the claim as unfounded;
- 2) to satisfy the claim and revoke the contested act (part thereof) or to obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court;
- 3) to satisfy the claim and to obligate the appropriate entity of municipal administration to accordingly implement the law, the Government resolution or another legal act;
- 4) to satisfy the claim and to settle the dispute in any other manner provided for by law;
- 5) to satisfy the claim and to award damages or redressing of a moral wrong caused to a natural person or an organization by the unlawful acts or omission in the sphere of public administration.

7. EU Environmental law

Given questions are quite difficult to answer as there is very little judicial practice in this respect in Lithuania and existent practice mostly concerns the right of interested organization to protect public interest in the sphere of environmental protection itself.

Taking into account the existent judicial practice and trying to predict possible judgment, it is important that in the given case according to the Law on Assessment of the Effects of Planned Economic Activities on the Environment environmental impact assessment is compulsory (as establishment of new motorways is included in the list of activities for which environmental impact assessment is always compulsory). According to the Article 7 of the Law on Assessment of the Effects of Planned Economic Activities environmental impact assessment is also necessary in any case when realization of planned economic activity, even not included in the list of activities for which environmental impact assessment is compulsory, can influence territories belonging to the European ecological network "Natura 2000", and institution responsible for organization of management and protection of conservative territories determines that this influence may be

significant. The Supreme Administrative Court of Lithuania has ruled that when environmental impact assessment had to be carried out according to the law, planning document can not be approved without prior environmental impact assessment.²¹ Thus, if environmental impact assessment has not been carried out, decision to approve planning document will be revoked by administrative court (a).

(b-e) Adverse effects of the project on the environment must be taken into account during the procedure of environmental impact assessment, which, as it was already mentioned, is compulsory for building new motorways, despite the fact whether the planned motorway can affect a natural habitat in the sense of EU “Habitats directive” or not. According to the Law on Assessment of the Effects of Planned Economic Activities on the Environment (which implements also Council Directive 92/43/EEC), disputes concerning conclusions of subjects of environmental impact assessment as well as conclusions and decisions of the responsible institution in the procedure of environmental impact assessment are dealt with according to the Laws. As no laws provide for special procedure for hearing such disputes, mentioned decisions may be appealed against to the administrative court. Thus in this case the claimant must appeal against the procedure of environmental impact assessment and decision to permit building of a motorway. Administrative court will then consider whether the procedure of environmental impact assessment was carried out properly whether all the important factors were taken into account by responsible institution and whether the requirements of relevant legal acts, in particular determining limitations of economic activities in natural habitats and sanctuaries, were preserved.

According to the Law on Assessment of the Effects of Planned Economic Activities on the Environment, if planned economic activity can negatively influence territories belonging to the European ecological network “Natura 2000” it can be permitted only if there is no alternatives and planned economic activity is connected to the public health, preservation of certain environmental components or other important reasons taking into account the opinion of European Commission. In this case all possible compensative measures should be projected and implemented. Decision to permit planned economic activities violating this provision is likely to be revoked by administrative court.

Law on Assessment of the Effects of Planned Economic Activities regulates the content of report on the environmental impact assessment in detail. The report must contain *inter alia* description of measures intended to avoid, diminish, compensate negative impact of the planned economic activity on the environment or liquidate after-effects of negative impact of the planned economic activity. It

²¹ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(10)-798/2003

should also contain description of various alternatives stating the reasons for choosing this particular alternative, taking into account also environmental impact. Responsible institution has a right to request amendment or supplement of the environmental impact report before taking a decision on the possibilities of the planned economic activity. Administrative court, hearing complaint concerning the impact of a planned motorway on the natural habitat or birds' sanctuary will take into account whether the report was prepared and analyzed properly.

8. Consequences of substantive and procedural deficiencies of the planning decision

a) As it was already mentioned, judicial practice concerning territorial planning and environmental protection in Lithuania is not numerous. For example, in 2004 there were only 55 cases of this category heard by the Supreme Administrative Court. That makes it difficult to give deficiencies which *regularly* render a planning decision void in practice. Several examples though can be provided: ignorance of conclusions of institution responsible for the supervision of territorial planning,²² contradiction of documents of special planning to the documents of general planning,²³ violation of procedure of public consideration during the planning procedure²⁴.

b) According to the Law on Administrative Proceedings, administrative court can revoke the contested act (part thereof) or to obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court. In case of complete invalidity, the planning decision will be just declared void by the court.

c) As it was already mentioned, an administrative court will not undertake the function of administrative authority. Additional requirements, such as reforestation or speed limits, will hardly be imposed by the decision of court. Taking into account relevant legal regulation, the contested decision will probably be revoked and matter returned for administrative authority for re-consideration identifying existent shortcomings and giving orders what should be done.

d) This question is very difficult to answer. Decision of court mostly depends on whether all the procedures of environmental impact assessment and territorial planning were duly followed.

Regarding the case of inhabitant of the residential area claiming the possible traffic noise and pollution (the first plaintiff), it should be noted that the claimant will be requested to prove the

²² Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(5)-693/2004

²³ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(8) – 61/2005

²⁴ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(14)–54/2005

violation of his/her personal rights. As far as the claim of this particular claimant is based on the possibility of future noise and pollution, very important is the report of environmental impact assessment, which must be challenged by the claimant.

Very similar situation was faced by the Supreme Administrative Court in administrative case No. A(4)-506-03 concerning the building of wind power-plants. Claimants in this case (owners of the neighbouring lands) asserted *inter alia* that building of wind power-plants violate their proprietary rights because of possible pollution resulting from the exploitation of wind power-plants. The Supreme Administrative Court of Lithuania has rejected those arguments stating that claimants failed to prove their arguments as according to the report on environmental impact assessment building of wind power-plants is ecologically safe, and claimants failed to challenge this report²⁵.

It is also important that building of a new motorway will be acknowledged public interest. Thus the mere discomfort of the mentioned claimant is not sufficient ground for abolishment of planning document, if all the necessary procedures were preserved.

Disputes concerning expropriation in Lithuania fall under the competence of courts of general jurisdiction (civil courts). Thus the claim of the fourth plaintiff (owner of the farmland) will not be heard by administrative courts.

Possibilities of success of environmental agency or association depend on whether all the procedures of territorial planning, especially regarding environmental impact assessment, were preserved. Association of the neighbouring state will have the same opportunities as national association, if it is established and functioning according to the national laws of its country. It should be also noted that Law on Assessment of the Effects of Planned Economic Activities provides for the international environmental impact assessment if it emerges during the procedure of environmental impact assessment that economic activity, planned in the territory of Lithuania, can have a significant negative influence on the environment of other state – member of the European Union, or if a neighbouring state - member of the European Union requests international environmental impact assessment.

Claim of municipality (the second plaintiff) is likely to be rejected. Law on Territorial Planning provides for different levels of territorial planning – national, regional, district and local. Municipalities are entitled to approve only territorial planning documents of district and local level. According to the Rules of Preparation of General Planning Documents of Municipality²⁶, approved by the Minister of environment, solutions of general planning documents of a municipality can not

²⁵ Ruling of the Supreme Administrative Court of Lithuania, administrative case No. A(4)-506/2003

²⁶ Order of 7th of May 2004 No. D1-263

contradict to planning documents of regional level; that is territorial documents of regional level are given a priority. According to the Law on Land of the Republic of Lithuania²⁷, land belonging to municipalities by the right of ownership is transferred to the state when it is necessary for the performance of state functions.

9. Remedy of deficiencies

Procedural or substantive deficiencies of the planning decision may not be remedied during the judicial process. If there are deficiencies, planning document will be just declared invalid by the court. The court will not modify the content of planning decision itself.

²⁷ Law of 26th of April 1994, No. I-446