

**Communication to the Aarhus Convention Compliance Committee
ACCC/C/2013/98 (Lithuania)**

September 7th, 2017

COMMENTS BY THE RUDAMINA COMMUNITY ON THE ANSWERS
PROVIDED BY THE PARTY CONCERNED TO THE COMPLIANCE COMMITTEE ON
THE AUGUST 31st, 2017

Dear Sir/Madam,

Referring to the Letter by the Aarhus Convention Compliance Committee to the Republic of Lithuania (Party concerned), received 15 August, 2017 and in response to the Answers provided by the Party Concerned, received 31 August 2017, we would like to provide our point-by-point comments.

1. *Please provide the Committee with Minutes No. D4-50 of 30 April 2010 formalizing the agreement between Lithuania and Poland referred to on page 13 of the judgement of the Kaunas District Court of 5 July 2012 (annex 1 to your reply to the Committee's questions of 8 June 2015). Did this agreement designate the border crossing points for the power line in a binding manner?*

Although the Party concerned states that the agreement between Lithuania and Poland referred to on page 13 of the judgement of the Kaunas District Court of 5 July 2012 was not binding, the Communicant would like to note that the Kaunas District Court obviously treated it as a binding one. Also, the Communicant would like to point out that throughout the entire dispute about the location of the power line this agreement was provided by the project developers, the consulting company and the responsible authorities as one of the fundamental restrictions for considering alternative routes. For example, in its written answer to the inquiries by the representative of the Communicant (Dr. Ramūnas Valiokas) and Prof. Paulius Kavaliauskas (Professor and expert of landscape management, Vilnius University) dated 3 December 2010 the Ministry of Environment clearly stated that the border crossing point shall be designated as specified in the Master Plan of Sejny County (the Republic of Poland)¹. Furthermore, the Communicant wants to stress, that the public concerned, especially the communities of Lazdijai district (which is directly bordering Sejny County) never had opportunity to discuss the solutions of the Sejny County Master Plan when it was adopted or amended. Neither the Communicant was notified under provisions of Article 6 of Aarhus Convention about planning of the power line in the territory of Republic of Poland once the LitPol Link project was initiated in 2008-2009, nor could it do so in the framework of the Espoo Convention, as the direct outcome of the above-referred agreement between Poland and Lithuania (Annex of the letter by the Ministry of Environment 31 August 2017) was elimination of the procedures for public participation in the transboundary context.

2. *Please provide the Committee with the relevant provisions of any agreements between Lithuania and the European Commission (or of any other relevant documents) which required that the decision on environmental protection conditions for the project should be issued by June 2012.*

¹ Excerpt from Page 5 of the letter by the Ministry of Environment of 3 December 2010, No. (10-3)-D8-11340 addressed to Dr. Ramūnas Valiokas: "During the consultations it was agreed that the director of PSE Operator S.A. via the project coordinator LitPol Link will pass over to AB Lietuvos energija (*later known as LitGrid AB- translator's comment*) information on the spatial planning document of the territory of Sejny County (Uchwała NR VIII/28/99 Rady Gminy Sejny [...]), and UAB Sweco Lietuva, which will be performing special planning, as well SEA and EIA, will plan the border crossing point in agreement with the spatial planning document of the territory of Sejny County, also taking into account the solutions of documents of spatial planning valid in Lithuania (EIA report L.2, Annex 8)" (*unofficial translation, the letter can be provided upon request*).

The Party concerned states that “Lithuanian institutions and Litgrid AB do not possess requested document (-s).” Still, in its answer the Party concerned admits the developer was funded by the TEN-E fund. As it is mentioned in the letter by LitPol Link dated 11 October 2010 to the Parliament of the Republic of Lithuania any changes of the power line route would imply corrections of the contract signed with the TEN-E fund and the latter case was obviously not desired for financial reasons. In such a way, the schedule set by the above-referred contract affected possibilities for public participation in the process of power line planning. Furthermore, the Communicant would like stress that any eventual agreements between Poland and the European Commission also referred in the letter by LitPol Link to Parliament dated 11 October 2010 restricted the possibilities for efficient public participation in Lithuania. Under such circumstances, the developers’ and other participating companies’ direct financial interests were obviously influencing the public participation and rights of the Communicant in a negative way.

4. *...could the decision-maker have contradicted the 2002 plan and opted for the “underground alternative” instead of an overhead powerline? If so, could such a decision have been the subject of a court challenge on the ground that it contravened the 2002 General Plan?*

The Communicant agrees with the answer by the Party concerned that the “underground alternative” could have been opted by the decision-maker despite of the solutions of the 2002 Master Plan. However, the Communicant does not agree with the statement that acceptance of any alternatives without having changed the General (Master) Plan accordingly is hypothetical only (page 2, paragraph 4 in the Answers provided by the Party concerned). As the Communicant pointed out in its comments to the Committee 30 May 2016, the common practice by the Party concerned is to decide on construction of large infrastructures and other environmentally risky objects not following the solutions of valid master plans but rather based on current political (and business) circumstances (see Page 2 of comments by the Communicant from 30 May 2016 for recent examples). Unfortunately, properly informing and consulting the public is most frequently of least importance in such plan changes, as seen also in our case. Moreover, in the Remarks by the Communicant sent to the Committee 25 February 2015 there is an example illustrating the degree of chaos in spatial planning procedures in the Republic of Lithuania. Namely, after the power line developer and the decision-maker selected and decided on the final power line route in 2010, the Master Plan of Alytus County (the county where also the Communicant is based) was approved by the Government of Lithuania by Decree No. 764 on June 22, 2011. Despite the so-called alternative B1 was adopted as the actual power line route in 2010, the newly accepted Master Plan of Alytus County in 2011 still designated the original route of the power line as specified in the Master plan of 2002 (see Remarks by the Communicant sent to the Committee 25 February 2015, page 5).

5. *If the decision-maker would have eventually decided to opt for the “underground alternative”, could such a decision have been subject of a court challenge by the developer (LitPol link) or other entity on the ground that it contravened Decision No. 1-190?*

As the Party concerned explains on page 1 in its answer to question No.2, LitPol Link Sp.z.o.o is 50% owned by the Lithuanian grid operator Litgrid AB. In turn, Litgrid AB is fully (more than 95%) controlled by the Ministry of Energy (Government). Therefore, it is indeed unlikely that any decisions undertaken by the governmental institutions could have been challenged in a court by those companies.

6. *Which of the following stages, if any, of the public procedure, were the designated stage(s) at which a member of the public (as opposed to a public authority like the municipality of Lazdijai) could have proposed an alternative route?*
- a. *Scoping;*
 - b. *Special plan concept development;*
 - c. *SEA hearing;*
 - d. *EIA hearing;*
 - e. *Any other point of the procedure (please specify).*

The Communicant agrees that there exist a national and European Union legal framework formally allowing for public participation (and alternative proposals) in either of the above-listed stages. However, the essence of the present Communication is that in practice, efficient and timely public participation is not possible under the present regulations and political context of the Party Concerned. The Communicant has already explained in the previously submitted comments to the Committee (12 December 2014, 5 June 2015) that the periods provided for studying the planning documents and reports, consulting experts and providing motivated proposals, alternatives are unreasonably short when compared to the volume and technical complexity of the specialized information in the documents related to planning of economic activities. For example, after information on the drafted EIA report was announced in the local weekly newspaper “Lazdijų Žvaigždė“ on June 25, 2011, the public was allowed within 10 working days from the day of the announcement to adhere to the EIA report materials and to present motivated comments, observations and/or proposals, including any alternative routes.

In its present Answers to Committee’s question No.7 the Party Concerned creates false impression of “massive” advertising and announcing of the opportunities for proposing alternatives. In fact, not a single announce about the LitPol Link project published in the local and daily newspapers contained a map or schematic explaining what territories will be like affected by the planned economic activity (power line construction). Therefore, the public and especially the public concerned could not associate the short information on some abstract planning procedures (which also contained mistakes misleading the public, such as 400 kW instead of 400 kV, wrong names of the villages, etc. and never were corrected) as invitation to participate and eventually propose alternative routes. See Annex I for an example of a typical advertisement format used for informing the public during all the stages related to the power line planning. This particular advertisement announced the beginning of the EIA procedure and informed the public it has 10 working days to adhere to the published EIA program. Notably, this particular advertisement did not contain any invitation to the public provide any alternatives.

Moreover, the Communicant regrets to learn that the Party Concerned in paragraph 1.2 on Page 3 creates a misleading impression of public participation and discussion on power line routes with members of the public during the presentation of concept solutions in the meeting held in Lazdijai District Municipality on 30 March 2010 (by citing a route-related question). Although the Party Concerned provided the Committee with a copy of the minutes of that meeting (Annex 1: Project concept 30.03.2010 to the Response from the Party concerned of 26 November 2014)², the submitted minutes file lacks the final page listing the participants of the meeting. The complete minutes document is attached to the present correspondence by the Communicant as Annex II. On Page 4 of the Annex II there is a list of all ten participants that were present in the meeting of 30 March 2010. They were all staff of authorities, the consultant, developer- not a single person could be identified as a member of the public.

In addition, the Communicant would like to inform the Committee that according to an article published in the daily newspaper called Respublika (28 July 2008) the Chairman of the Board of LitPol Link Sp. Z.o.o. Mr. Vidmantas Jankauskas stated that the developer intended to opt of a power line route different than that specified in the Master Plan from 2002. He regretted that the outcomes of the early stage planning of the power line route were publically available and expressed concerns whether this information could be used real estate dealers. According to Mr. Jankauskas, a new route for the power line will be selected by an international consulting company and the plan “rather will not be public”.³ The later development of the LitPol Link power line project indeed confirmed the above-cited intentions. The public concerned became aware of the possibilities to participate in the route planning only when the EIA report was published and not at the previous stages when all alternatives were still open.

² https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-98/Response_to_communication/Annex_1_Concept_30.03.2010_lit.pdf

³ Copy of the article “Electricity interconnector- a bait for dodgy persons” in daily newspaper Respublika from 28 July 2008 can be provided upon request.

7. *It appears from the documents provided to the Committee that the EIA and SEA procedures each analyzed three route options (A, B and B1). Was the public notified of the existence of all three of these route options and informed of their opportunities to comment on each of them? If yes, please specify how and when the public were notified regarding each option.*

The Communicant would like to stress that the so-called route option A was the solution of the General Plan from 2002. As mentioned above, it was obviously undesired by the developers from the beginning of the LitPol Link project planning. The SEA procedure was the first opportunity to inform and to consult the public about any new route (e.g. options B and B1 which in the territory of Lazdijai district essentially are one and the same route). However, the developers and the consultant failed to inform the public concerned in an effective way. As evidenced by the minutes of the public hearings held in Lazdijai District, not a single person from the public participated in the meetings called by the consultant and developer (except their own staff, municipality and other public authority representatives)⁴. Thus, the route B1 (the same as B in the Lazdijai region) was identified and proposed by the developer and the consultant without consulting the public. The two routes A and B were further taken into the EIA procedure. The local community represented by the Communicant (the public concerned) became aware of the OHL project only after the EIA report became published in July 2010, i.e. without having the opportunity to participate at the earliest stages when all the location alternatives were still open.

8. *In annex 5 to your response to the communication, you have included a public information brochure. When was this brochure issued? When and how was this brochure made available to the public?*

The Communicant would like to remind that it became aware of the power line project and, most importantly, the intention to construct the power line in the vicinity of Rudamina village only in July 2010 once the EIA report was published and announced by the private consultant company and the developer. Association Rudamina Community (the Communicant) has been active and recognized by the local community as the representative of the local people since 2005. Having such an established local network and also close cooperation with the local government, the Communicant would have been informed about the distribution of the above-mentioned brochure if it was ever distributed. Having received the brochure only in mid-July 2010 (upon attending the EIA hearing in Lazdijai organized by the company UAB Sweco Lietuva), the Communicant suspects that the information about the power line project was spread in a restricted way. However, the Communicant does not deny the possibility that the above mentioned brochure was available in the previous public hearings and meetings called by the consultant and developer companies in Lazdijai District during the first half of 2010 that never were attended by any single member of the public (see above).

10. *Please provide the Committee with the average number of copies distributed for a single edition of the following newspapers:*

- a. *Alytaus Naujienos.*
- b. *Dzūkų Žinios.*
- c. *Lazdijų Žvaigždė.*
- d. *Miesto Laikraštis.*
- e. *Respublika.*
- f. *Lietuvos Žinios.*

The Communicant has no statistical data on the editions of the above-listed newspapers.

Referring to the email dated 31 August 2017 from the Aarhus Convention Secretariat we also attach the decision of the national court of 8 December 2014, in which it dismissed Communicant's

⁴ See Annex II to this document as well as the minutes the other early planning stage meeting held in Lazdijai district, previously provided by the Party Concerned:

https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-98/Response_to_communication/Annex_2_Minutes_of_public_discussion_18.05.2010_lit.pdf

application to release it from the litigation costs ordered in favor of the company LitPolLink Sp. z.o.o. Unfortunately, we could not make English translation of the full decision in such a short time, instead please find attached the original language version as Annex III. Unofficial translation of the relevant paragraphs on Page 2 explaining the motives for the judgement is provided below (see also version with marks of the Annex 3 for clarity):

“The claimant (a community concerned) under the Lithuanian law (Law on Procedural Rules of Administrative Cases nor Civil Procedure Code) is not provided with an exemption from the court fees in administrative cases based on environmental issues. The court fee is always payable by the claimant to the State budget prior to submission of claim or appeal.

National Law on Rules of Procedure of Administrative Cases and the Civil Procedure Code do not provide for a possibility to release the applicant from litigation fees.

The Law on Rules of Procedure of Administrative Cases provides that in case there is no applicable rule the court must apply general principles of law and criteria of justice and mindfulness.

Therefore, taking into account the mentioned rules and case law of Aarhus Convention the Rudaminos Community (the community concerned) being an applicant/claimant in administrative case No. 1-757-422/2012 (ruled by the Kaunas District Administrative Court) applied to that court asking to release the applicant (a community concerned Rudaminos bendruomenė) from paying litigation fees that the court awarded to the third party LitPol Link Sp.Z.o.o. 7983, 60 Lt (2312,21 Eur) (litigation expenses on the first level case) and 1 570, 26 Lt (454,77 Eur) (litigation expenses in the appeal level case). We attach an application dated October 8, 2014.

The Court denied satisfaction of application based on the following:

(1) Art. 4 section 6 of the Law on Rules of Procedure of Administrative Cases provides a possibility to apply general rules and criteria of justice and mindfulness in case the law does not provide for a relevant rule;

(2) the Law on Rules of Procedure of Administrative cases does not provide for a possibility to release from litigation fees;

(3) Art. 284 section 1 of the Civil Procedure Code does not provide for release of litigation fees, it provides for:

- an extension (postponement) of execution of the court judgement, or

-permission to imply the court judgement in parts;

(4) ECC case law in C-530/11 is about application of interim measures, therefore it can not serve as analogous example;

(5) the applicant did not amend its application to release from litigation expenses although the court has offered to do so.”

The Communicant is of opinion that the Aarhus Convention was disregarded. The court is under the must to perform justice in general and in particular, therefore the court is under the must to apply proper law or general principles of law irrespective of motives used by the applicant.

Sincerely,

Dr. Ramūnas Valiokas, representative of the Assotiation Rudamina Community

Ramunė Ramanauskienė, advocate