

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

October 9th, 2017

COMMENTS BY THE RUDAMINA COMMUNITY ON THE FURTHER ANSWERS
PROVIDED BY THE PARTY CONCERNED OCTOBER 2, 2017

Dear Sir/Madam,

Please find below Communicant's comments to the further answers provided by the Party Concerned, received on the 2nd of October 2017.

Comments regarding the answer to Question 3:

"Were there any other agreements between Lithuania and EU institutions relating to the construction of the power line between Alytus and the Polish border? If so, please specify the date and give a brief description of the nature of each agreement."

In its latest answer the Party Concerned lists four contracts (October 1 2008, July 23 2010, November 11 2013 and October 30 2015) signed by Litgrid AB, i.e. the national grid operator and the EU, respectively, without providing the nature of the agreements and conditions set for implementation. The Communicant would like to remind, once again, that Litgrid AB is fully (more than 95%) controlled by the Ministry of Energy (i.e. by the Party Concerned).

The Communicant also submits two documents overlooked in its previous correspondence: the letter by the European Commission DG for Energy addressed to Association Rudamina Community, Ref. Ares(2015)1399374 - 30/03/2015 (Annex I) and decision on granting of Community financial aid for the Polish part of the LitPol Link project: "Feasibility studies of the LitPol Link Project" 2008-E243/08-TREN/08/TEN-E - SI2.536847 (Annex II). These documents highlight the principles of funding of the LitPol Link project. According to the official explanation by the European Commission, no agreements were made with regards to specific deadlines for issuing the environmental decisions in Poland and for completion of the construction of the LitPol Link power interconnection. **However, the ultimate deadline of the 31st of December 2015 (which was extended from the original deadline of the 31st of December 2012) represented a legal requirement in order for the project to be eligible for funding under the ERDF**, in line with Article 56 of the Council Regulation (EC) No 1083/2006.

Regarding the contracts and agreements signed by the Lithuanian party, it is obvious that also the contract of October 1, 2008 (referred by the Party Concerned) was signed before any discussion with the public was started, whereas that of July 23, 2010 came into power at the stage when the EIA report was challenged by the public concerned and experts and was also refused by some of the participating institutions (so-called subjects of the EIA). This implies that that the Party Concerned undertook the crucial decisions on implementation of the power line project before any discussion with the public concerned was started/completed. **This is a clear violation of Art. 6 part 8 of the Convention.** Also, the existence of the above-mentioned contracts signed by the EU and Litgrid AB (the company owned by the state) as well those involving the Polish national grid operator and their subcontractors like consultants, construction companies was obviously the crucial factor influencing the decisions of Lazdijai Municipality, the State Department for Heritage Protection¹ and other

¹ Excerpt from the letter by the letter by State Department for Heritage Protection to Dr. Ramūnas Valiokas, 2010-08-20 No. (10.4)2-2392: *"The Department agrees that the route of the overhead electrical power transmission line indeed stretches across the picturesque terrains of Dzukija region, rich in hills and forests, and it would be more rational to construct this overhead power line in the agrarian territories of Kalvarija and Marijampole municipalities, in the already formed infrastructural corridor. Therefore, the Alytus territorial section of the Department in a reasoned way has refused to approve the submitted EIA report."* (Last paragraphs of Page 2 of the letter, the full document can be provided upon request by the Committee).

institutions. These institutions, with the aim to defend the public interest, first supported the alternative route identified by the Communicant during the EIA public hearings stage and refused to approve the EIA report prepared by the private consultant companies Sweco Lietuva AB and Sweco International AB². However later they approved the planning documents and the final OHL construction project, after having received aggressive criticism by the private consultant as well as by the Ministry of Energy ³, and also other type of pressure as briefly described on Pages 7-8 of Communicant's comments dated February 25th 2015.

Comments regarding the answer to Question 9:

"The communicant submits that its Chair was on two occasions contacted by the State Security Department inquiring about the power line project and requesting a meeting.² The communicant further submits that on 16 January 2015, the State Security Department issued a statement confirming that they had issued an internal assignment to "contact Rudamina community and to discuss the issues encountered by the people of Rudamina".³ Please comment on these allegations, including whether any such action by the State Security Department was related to the communicant's involvement with the OHL development."

The Communicant treats the answer by the Party Concerned as a misleading one since the Chair of Rudamina Community indeed received two phone calls from the State Security Department (hereafter SSD), as explained in Communicant's comments dated February 25th 2015. Although the Party concerned states that the SSD contacted the Chair "in order to clarify the issues", already in the popular Public radio service program sent January 5th 2012 Ms Rūta Cimakauskienė revealed that the content of the conversation was of harassing nature, including questioning of Communicants actions, advices such as "come for a meeting without necessary bringing a toothbrush", etc. Similarly, also in June 2014 upon contacting another person closely cooperating with the Communicant in defending their rights an officer of the SSD asked for information that was likely already known by the intelligence services. This person, Ms Jurgita Želionienė has informed the Communicant that she got an impression that her phone calls could have been under surveillance as the facts touched upon in the meeting seemed to be well know to the SSD officer. The officer also had questions specifically relating to the activity of the Chair of Rudamina Community.

Finally, the Communicant would like to remind that it has encountered other cases of harassment in the context of trying to access environmental information, subject also to the complaint No. 2013/5 under Bern Convention. In its correspondence to the Bureau of Bern Convention dated 3rd of September, 2014⁴ the Communicant described a case when the representative of the Communicant Dr. Ramūnas Valiokas, together with an entrusted expert Mr Evaldas Snieškus, performed a field survey on biodiversity in the planned construction site of the OHL (on the 30th of May 2014). Suddenly the visit was interrupted by an environmental protection officer and other persons who did not present themselves. These persons visited the private car of Ramūnas Valiokas asking questions related to the protected species, equipment carried, etc. It was obvious that the representatives of the Communicant where under surveillance as they came to a specific remote location without having in advance planned the route of the field study. This implies that they were followed and immediately

² See for example The Decision No. 5TS-1416, 2011-03-01 by the Council of Lazdijai district municipality in Annex 14 in Communicant's comments of February 25th, 2015.

³ See for example excerpt from the letter by the consultant Sweco Lietuva AB, 2010-09-17, No. V1-1853 to the Administration of Lazdijai district municipality (unofficial translation): *"This special plan is a part of a joint international project implemented by the Republics of Lithuania and Poland, planning a 400 kV OHL and other necessary infrastructure for electrical energy transmission from Alytus town in Lithuania to Elk town in Poland, by thoroughly coordinating the mutual actions of both countries in performing the procedures of territorial planning and EIA of the planned economic activity. The actions by Lazdijai district municipality undertaken at this stage can crucially change the solutions foreseen in the valid master plans, influencing the course of the project implementation in either of the countries involved and thus making a huge damage to the energy security and economic development of the countries"* (Last paragraph of Page 4, the full document can be provided upon request by the Committee).

⁴ Available in the database of the Council of Europe as T-PVS/Files (2014)7 of the Bern Convention Bureau meeting of September 10, 2014.

stopped with the purpose of taking over critical information on specific species protected under Bern Convention. Any evidences on the presence of those species could influence the status of the case No. 2013/5 and, in turned, could have affected the funding of the LitPol Link project by the EU and the banks such as EIB and NIB.

To summarize, in its answer to the Committee's question the Party concerned has not presented any justified reasons why the Chair of the Rudamina Community was requested to meet an SSD officer and what issues of the LitPol Link project had to be clarified by the SSD. Although the Party Concerned declares that the SSD activities and conduct always shall comply with the principles of political neutrality, lawfulness, without interfering of democratic processes, the fact of harassing questioning of Rūta Cimakauskienė as well as the other two cases revealed a continuous open involvement of the intelligence services throughout the different stages of the EIA procedures, project planning and implementation. This should be treated as a clear interference with democratic process of public participation (violation of Art. 3 part 8 of the Convention). The Communicant also would like to draw attention of the Compliance Committee that the SSD was not included into a list of the state institutions that shall take part in preparation of the EIA of the project in question.

Comments regarding the answer to Question 11:

"In your letter of 9 June 2015, you state that under Lithuania's territorial planning system, the planning organizer is responsible for notifying the public as well as taking comments of the public into account. Please specify which entity (e.g. the project developer, the EIA consultant or the competent public authorities) is responsible in the context of an EIA procedure for:

a. Identifying the public concerned by the project;

b. Taking the comments of the public into account (i.e. not "analysing how comments were taken into consideration"⁴ after the fact, but the actual stage of taking them into account)?

Please provide the text of the relevant legislative provisions where the entity responsible for each of the above tasks is specified, together with an English translation thereof."

The Communicant would like to draw attention of the Compliance Committee that the Party concerned has not provided a clear answer who and when is responsible for a) identifying the public concerned and b) taking the comments of the public into account during the EIA procedures.

The Communicant would like to underline that the Law on Environmental Impact Assessment of the Proposed Economic Activity does not provide who and when (at what stage) shall identify the public concerned. This obligation is not imposed neither on a project developer/operator, nor on an EIA consultant, nor on a competent public authority. The above-mentioned Law provides that the competent public authority is responsible for coordinating the EIA procedures, reviewing of compliance of all participants' conduct to provisions of the Law, etc.

The Communicant also points out that the same issue relates to the responsibility for taking the comments of the public into account during the EIA procedure. The Communicant notes that the comments of the public usually are collected by the drafter of the EIA but not taken into account as required by the Convention. In Lithuania, comments by the public for a long time have been dismissed or disregarded as groundless if they missed the condition of being "reasoned" (until June 28, 2011). As of June 28, 2011 the Law provides that the drafter of documents of EIA shall submit proposals from the public to the so-called subjects (parties) of the EIA (state and other institutions involved into EIA). However, the Lithuanian laws still require any proposal from the public and/or public concerned to be reasoned. For example, Art. 11 of the Procedure for Public Information and Participation in the EIA prescribes a list of requirements that public proposals shall comply with and one of such requirement is to present in writing "information and circumstances justifying the proposal" (Art. 11.3).

Therefore, the Public Concerned is not able to participate in EIA as provided by the Convention because the Public Concerned or, in this case, the Community Concerned has very limited time to acquaint with a huge volume of specialized and technically challenging documents and to draft a

proposal with justification as required by the Art. 11.3 of the Procedure. The above-explained state in the Lithuanian Law is a clear violation of Art. 1 and 6 part 2-9 of the Convention.

Sincerely,

Dr. Ramūnas Valiokas, representative of the Association Rudamina Community

Ramunė Ramanauskienė, advocate