

Communication to the AARHUS Convention Compliance Committee

ACCC/C/2013/98 (Lithuania)

December 12, 2014

GENERAL REMARKS OF THE COMMUNICANT REGARDING WRITTEN EXPLANATIONS OF THE REPUBLIC OF LITHUANIA IN CONNECTION WITH THE CONSTRUCTION OF OVERHEAD POWERLINES

Dear Madam/Sirs,

By this communication we would like to present brief remarks and general observations to the position of the Government of The Republic of Lithuania as submitted by its written explanations dated November 26, 2014. We submit this document taking into consideration that this case is included into the schedule of the Compliance Committee Meeting on December 16, 2014, and due to shortage of time to provide detailed responses to the statements by the Government. Also, this short response could be prepared taking into account that since submission of our communication new facts and circumstances took place, including decision of national courts to reject application of the Association Rudamina Community (hereafter- the Communicant) for the release of remuneration of non-proportionally high litigation expenses in favour of the Polish company LitPolLink Sp. z.z.o (power line project developer who was not a part in the national court procedures and was involved as a third person), as well as the recent hearing of the other complaint under the Bern Convention, etc.

After acquaintance to the written explanations of the Republic of Lithuania we would like to underline that the general point of our communication is, that Article 6 of the AARHUS Convention was violated.

Chapter 4 of Article 6 requires **that each party shall provide for early public participation, when all options are open and effective public participation can take place, with respect to decisions on whether to permit proposed activities. We understand Article 6, chapter 1a of the AARHUS Convention that this article applies to all decisions.**

No public participation was initiated in no way before the Minister of Energy of the Republic of Lithuania already **in October 2009** issued a Decree *“On preparation of the special plan for the construction of the 400 kV **overhead** power line from the Alytus transformer substation to the Polish-Lithuanian border”*. The first time when the term „overhead power line“ was mentioned was that particular Decree. All information and documents prior to that Decree provided information only about plans to build a powerful link with Poland for integration into the West European electricity system.

The Republic of Lithuania in its written explanations dated November 26, 2014 did not submit any proof nor evidence about early discussions involving public participation on a technology of the planned infrastructure, i.e. *“overhead”* versus *“underground”* power line, AC or DC. The Communicant submitted evidence that the World Bank consultants after taking into account economic, social, environmental and other factors identified advantages



of the DC technology, which, in turn is often implemented as an underground power line. Moreover, the other evidence that was provided by the Communicant is a letter from the Danish grid operator, revealing that even the AC power lines can be constructed by employing partial undergrounding technology. Practice on implementation of the Aarhus Convention is clear that a financial factor can not be a decisive one when deciding on the best available methods.

The Republic of Lithuania in its written explanations lists a number of publications in local newspapers starting after the above-mentioned Decree was issued. However, none of publications in the newspapers contained a visualization (maps, examples of the line technology, etc.), therefore the owners of private land, inhabitants of villages and towns where not informed whatsoever at an early stage that a 400 kV power line will cross their private lands taking from the owners from 30 to 60 percent of their agricultural land plots as easements/servitudes for the needs of 400 kV power line. The format of advertising was in no way informative or clear to the public, especially bearing in mind that no infrastructure of that scale had been built before in the rural region of the Southwestern Lithuania, and that it is the first 400 kV transmission power line in Lithuania. Therefore, a number of publications, which from the communicant point of view was not informative and insufficient, can not be regarded as proper actions corresponding to the Aarhus Convention.

There was no publication at an early stage in respect of the amendments to the Master Plan for the territory of Lithuania in a part of location of interconnection line route. The Master Plan as approved in October 29, 2002 provided for a different location of that 400 kV power line that would be 7 km away from Rudamina village and thus would not interfere destructively with the environment of the local inhabitants represented by the Communicant. Moreover, the spatial planning documents adopted by the Lazdijai municipality (in which Rudamina village is located) as late as in 2009 still foresaw the 400 kV power line in the location defined by the Master Plan for the territory of Lithuania. Therefore, the public concerned had no reason to expect that the Government of Lithuania may suddenly initiate and decide to create a new route for the line in other area of Alytus county/Lazdijai municipality instead of using those that were already proposed and decided by the Master Plan.

The public was not properly notified about the possibility to participate at the scoping stage, i.e. in deciding on critically important issues (method of construction and location of route) that design the SEA of the special plan and the EIA program. The Republic of Lithuania in its position mentions that the representatives of the Communicant participated in the EIA public hearings later on (in July-December 2014). However, at that stage the EIA report was already completed by the private consultant companies Sweco International and UAB Sweco Lietuva, respectively, and it was already impossible to propose for objective and throughout evaluation any alternative routes/technologies of the planned transmission power line. The decisions on the evaluated routes and technologies had been already undertaken during the SEA stage, without participation of a single person from the public concerned from Lazdijai municipality (see for example the meeting minutes from 2010.05.18, Annex 2 in the original communication).

All questions and comments of the public concerned after the issued Decree of the Minister were only formally reviewed by the developer and its consultant. Such formal approach can not be regarded as relevant, even though formally compliant to the national law, in particular taking into account the scale of the planned infrastructure and its impact in such an environmentally sensitive area (a unique cluster of archeological, Natura 2000 sites, landscape and other values).



Moreover, the public concerned was requested to present **motivated** arguments and proposals/comments. One can agree that to acquaint with all information and present motivated comments, objections or proposals within 12, 16 or 20 working days would be hardly possibly even to a dedicated specialist or an expert, needless to mention people of the community concerned who would have to consult experts to prepare their motivated position for the public participation.

The Aarhus Convention requirement for the public to be informed in an **effective** manner about the nature of possible decisions was not pursued by the Government of Lithuania because the public authorities did not provide any adequate means of informing the public, which ensures that all those who potentially could be concerned would have a reasonable chance to learn as much about proposed activities as possible and would ensure public concerned possibilities to participate in early discussions. Answers to the journalists and comments of the media representatives after meetings and conferences organized by the developer in no way can be regarded as sufficient and effective for the public to be informed. In some cases the Communicant perceived the local media publishing information favorable to the project developers.<sup>1</sup>

Time frame of 20 working days is inadequate to the scope of a SEA report. Acquaintance with the technical documentation, including the SEA report, spatial planning documents, etc., and for preparing to participate in the decision-making process concerning directly the rights and interests of the public concerned is a process that requires studying and analysing special literature, consulting experts. Such a time frame does not meet the requirement of reasonable time-frames under Article 6, paragraph 3. This planned activity seriously interferes with basic social and economic rights of members of the community concerned. The same insufficient time frame (10 working days) was given by the developer to the public regarding discussion of the EIA report, when the Communicant for the first time learned about the ongoing planning and suddenly had to prepare for reasoned and motivated public participation.

The Aarhus Convention requirement for early public participation when all options are open means that at each stage of decision-making certain options are discussed and selected with the participation of the public. Each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. There was no public participation on deciding the overhead line construction method and on deciding on location of power line route or on deciding to change the preliminary location of such route as was provided by the national Master Plan in 2002 and by the municipal spatial plan in 2009.

It is also clear from written explanations of the Republic of Lithuania that information to the public concerned in newspapers or organizing of meetings with the public was spread only by the developer and its consultant UAB SWECO Lietuva. Minutes of meetings show very poor participation and also indicate that the participants of the meetings were only representatives of the developer and its consultant (hired by the developer), only in some cases- municipal and other officers. It means that the Government relied solely on the

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<sup>1</sup> For example, the local newspaper *Dzūkų Žinios*, owned by a private company of the Major of Lazdijai municipality Mr. Artūras Margelis, published in July 27, 2010 an article that encouraged the public to get familiar with the published EIA report. However, the article contained also the following text: "We expect and put our efforts that the landlords will agree with a good will to accept the power line in their land plots. In case the landlords disagree, there will be issued administrative servitudes. In the latter case, the landlords will still receive the state reimbursement, but will lose additional payments foreseen by the project developer AB „Lietuvos energija“.



developer in providing for public participation. However such position (the reliance on the developer) is not in line with the provisions of the Convention.

The communicant disagrees to the position of the Government regarding properly presented information to the public on decision to permit activity. Publishing of decision during the Christmas/New Year Holiday time on a website of the Alytus regional authority and later in a weekly newspaper or on billboards outside (at the winter time) or inside Alytus or Lazdijai municipal authorities or local elderships instead of informing directly the Chairman of the Rudaminos Community can not be regarded as compliant to the requirement of the Aarhus Convention. The decision was not published promptly and it did not contain comments and observations of the public concerned. Section 8 of the decision listed and described all publications about the planned activity and organized meetings or conferences related to the planned activity. However, the decision has no information regarding comments and observations that came from the public concerned. Therefore, a requirement of taking due account of the outcome of public participation, as required under article 6, paragraph 8, was not observed too.

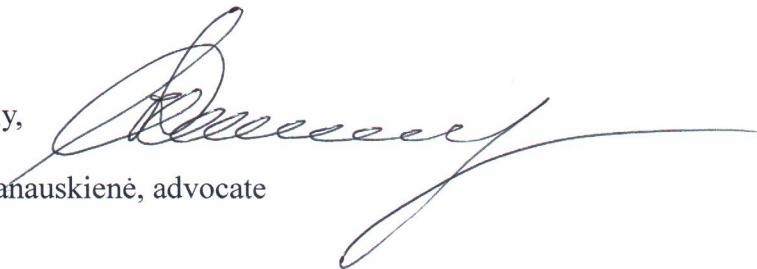
Therefore, the Communicant comes to conclusion that the Republic of Lithuania did not act properly to ensure that the public be informed in a timely, adequate and effective manner at an early stage when all alternatives are possible.

Also, throughout the process of scrutiny of another complaint under the Bern Convention (complaint as case possible, No. 2013/5), the Communicant again has faced inappropriate attitude of the Lithuanian authorities restricting the access to environmental information. Namely, the Communicant was not given possibilities to verify information on strictly protected species in the vicinity of Rudamina village, denials that obviously had the purpose to tone down the actual environmental impacts of the 400 kV power line project. Most recently, the Communicant faced total ignorance of the responsible environmental authorities in supervising/controlling the field works carried out outside Rudamina by the power line construction company in an area classified as a landscape of outstanding beauty. The Communicant suspected potentially illegal or at least unnecessary devastation of the landscape via excavation of sand and gravel (used for construction of the power line), activities not foreseen in the EIA and special plan approvals issued by the authorities. The examples of such ongoing activities can be seen in the video material collected by the Communicant.<sup>2</sup>

Finally, the Communicant would like to inform that it is cooperating with a local community affected similarly by the 400 kV power line construction project in the Republic of Poland. This colleague NGO from the town of Bakalarzewo, located 40 km from Rudamina, is also preparing for lodging a complaint under the Aarhus Convention.

Yours sincerely,

Ramunė Ramanauskienė, advocate

A handwritten signature in black ink, appearing to read 'Ramunė Ramanauskienė', with a long horizontal flourish extending to the right.

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<sup>2</sup> Video sequence available at [https://www.dropbox.com/s/layhxiozd4goudb/IMG\\_1260.MOV?dl=0](https://www.dropbox.com/s/layhxiozd4goudb/IMG_1260.MOV?dl=0)