



LIETUVOS RESPUBLIKOS APLINKOS MINISTERIJA
THE MINISTRY OF ENVIRONMENT OF
THE REPUBLIC OF LITHUANIA

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Compliance Committee
Convention on Access to Information, Public
Participation in Decision-making
and Access to Justice in Environmental Matters
(Aarhus Convention)
United Nations Economic Commission for
Europe
Environment Division
Palais des Nations
CH- 1211 Geneva 10, Switzerland

2015-06-09 No (16-1)-D8-4359

**REGARDING THE RESPONSE TO THE COMMICANT'S ADDITIONAL REMARKS
OF 25/02/2015 (ACCC/C/2014/98)**

Dear Ms. Fiona Marshall,

The Ministry of Environment of the Republic of Lithuania in response to additional remarks, sent to the Aarhus Convention by the Association Rudamina Community (hereinafter referred to as Communicant) on 25 February 2015, presents its comments to arguments that were not explained in depth in our previous communication and that are directly related to matters of the Aarhus Convention.

Firstly, in the letter of 25 February 2015 Communicant repeated some of the accusations for the Government of the Republic of Lithuania, which were already made in the initial communication, dated 30 December 2013 (for example, insufficient information for the public). Secondly, Communicant submitted a great amount of information which does not fall within the scope of the Aarhus Convention: (1) information about agreements between Lithuanian and Polish developers and the European Commission, which, according to the Communicant, are *"in breach with the provisions of the Aarhus Convention"*; (2) statement that Lithuania and Poland did not follow the provisions of the Espoo Convention; (3) information about involvement of Special Investigation Service of the Republic of Lithuania and the State Security Department of the Republic of Lithuania; (4) psychological pressure for the owners of private land plots; (5) application to the European Court of Human Rights; (6) AB LITGRID involvement in plans of restoration of the Roman Catholic Church in Rudamina village; (7) illegal demolition of landscape; (8) information regarding Communicant's communications with Nordic Investment Bank (NIB) and statement that NIB *"attempts avoiding responsibility"*; (9) issues related to the Bern Convention. Finally, Communicant provides misleading information, which will be clarified below (especially regarding false statement that Lithuanian legislation is still in non-compliance with the Aarhus Convention in respect to the findings and recommendation made in the case ACCC/C/2006/16).

1. Concerning the legal status and the hierarchy of general and special territorial (spatial) planning documents

As it was mentioned in our response of 13 March 2015, the objective of the general planning

is the integrated planning for establishing the territory use priorities, development objectives and the policy. There were general plans (hereinafter referred to as general plan or master plan) of different levels set in national legislation during the planning and implementation of the Project: 1) general plan of the Republic of Lithuania; 2) Counties' general plans; 3) District municipalities' general plans. It should be noted, that approved general plan becomes legally binding and also becomes the ground for drawing up, amending or supplementing of general, special or detailed territorial planning documents of the lower level. The main goal of the general plan is to establish principle concept of territorial development perspective. One of the aspects of the establishment of principle concept in our case – reservation of certain territories (of municipalities) for the implementation of specific infrastructure. Each general plan of the lower level (county, municipality) takes over the planning solutions of the higher level plans' (for e.g., reserved territories for the infrastructure). Moreover, detailed location of the infrastructure is designed during the special territorial planning process (infrastructure should be located in the territory of the same municipalities which were reserved in the general plans, although in the sense of kilometers, location might be different (staying within the municipalities under question). In addition to this, after the approval of the special plan of certain infrastructure and in case of amendment of a general plan, the exact confirmed location of an infrastructure can be marked for the sake of clarity.

While speaking about general planning related to the infrastructure in question, we have four general plans in mind:

(1) General plan of the Republic of Lithuania;



Planning organiser: Ministry of Environment

Plan's drafting time: from 1996 to 2002

Note: Lithuania ratified Aarhus Convention in 2002.

(2) General plan of Alytus County;



Planning organiser: Administration of Alytus County

Plan's drafting time: from 2004 to 2011

Note: In 2005 drafting of Alytus County General (Master) plan was temporally stopped because of the lack of financial resources.

(3) General plans of Lazdijai district municipality and Alytus district municipality.

*Lazdijai district**Alytus district*

Planning organiser: Administration of Lazdijai district municipality

Planning organiser: Administration of Alytus district municipality

Plan's drafting time: from 2007 to 2008

Plan's drafting time: from 2006 to 2009

The Communicant confirmed that the route of infrastructure was the same in all four general plans: *“That plan (note: Master plan of Alytus County) also has an infrastructure map of Alytus County (Annex 13) in its annexes with the route of the planned 400 kV power line exactly the same as shown in the national Master plan and in the Master plans of Lazdijai district and Alytus district municipalities, respectively.”* As it was mentioned before – general plan reserves territories (municipalities; lower level general plans might have more detailed description naming the main cities next to the route of the planned infrastructure). During the special planning process, certain location alternatives are provided for the discussion of the public and of the competent persons.

According to the argumentation mentioned above, we cannot agree with the Communicant's statements that different location in special plan compared to the general plans is *“free interpretation of the solutions of the valid master plans”*. Moreover, the national court practice cited by the Communicant does not support any of the Communicant's statements and is not related to any similar situation, which is dealt in this case. Furthermore, the amendment of Alytus district municipality general plan in 2012 doesn't contradict the national legislation. General plans are prepared for a minimum of 10 years' period of time. It is obvious that many factors may determine the need to update a general plan. During one of such amendments, the location of the infrastructure was amended according to the approved special plan. Such possibility is enshrined in the national legislation.

2. Concerning participation (share of competence) of the competent authority and private subjects in territorial planning and EIA

We cannot agree with the statement of the Communicant that provisions of Article 6 of the Convention have been violated. On the contrary to what was said by the Communicant, competent authority participates in the territorial planning, SEA, EIA processes and all related information is directly available from the competent authority.

A table provided below shows, that a balance of competent authorities' and private subjects' competences is set in the national legislation.

Process	National legislation
Territory planning	General and special territory planning is relevant in the analysed situation. It should be borne in mind that in case of general territorial planning competent authority is also a planning organiser (as it was noted above, planning organisers were the Ministry of Environment, administration of Alytus County, administrations of Lazdijai and Alytus

	<p>district municipalities). In case of special planning, planning organiser is the developer of the Project (this right was granted by the minister of energy). The competence between planning organiser and the competent authority is shared as follows:</p> <p>Planning organiser:</p> <ul style="list-style-type: none"> - Carries out all procedures regarding the publicity of territory planning (including SEA procedures where applicable); - Chooses publication sources depending on the level of territory planning (national, local, municipality); - Planning organizer or its authorized person introduces public with the documents of territory planning, publishes information in the local press and on the website (on the billboards when applicable) about possibilities, order, time, and place to get acquainted with the content of the documents; - Takes due account of received public comments – accepts or rejects by providing rejection motives; - Submits planning documents with the summary of public comments to the competent authorities; - Organizes public hearings. <p>Competent authority:</p> <ul style="list-style-type: none"> - Assesses and approves territory planning documents; - Natural and legal persons can get acquainted with approved territory planning documents, get copies of these documents from the competent authority.
EIA	<p>Project developer (Organizer of the planned economic activity):</p> <ul style="list-style-type: none"> - Implements certain EIA procedures according to the national legislation. <p>Preparer of the EIA documents:</p> <ul style="list-style-type: none"> - Identifies, describes and evaluates possible impact of the planned economic activity to the environment, prepares program and report and implements certain EIA procedures according to the national legislation. <p>Relevant parties of EIA (state and local authorities) analyses EIA documentation and how public comments were taken into consideration within their scope of competence and provide conclusions.</p> <p>Competent authority:</p> <ul style="list-style-type: none"> - Coordinates EIA process and performs other functions specified in the national legislation (e. g. publishes information regarding EIA procedure, organizes the consideration of the public comments); - Analyses and approves EIA program; - Analyses how public comments were taken into consideration; - Analyses conclusions of the relevant parties of EIA; - Takes the decision.

3. Concerning 27 September 2010 meeting at the Parliament of the Republic of Lithuania

We confirm that in 27 September 2010 a meeting at the Parliament of the Republic of Lithuania was held. Various aspects of the Project, such as the status of the development of the Project were discussed. However, this meeting was not an obligatory step of any procedure (territory planning, EIA, etc.) and did not have any consequences in legal terms. This meeting was not followed by any legal decision either.

4. Concerning legal expenses suffered by the Communicant

Communicant states that Article 9 of the Convention was breached by ordering to pay

litigation costs of 2766,98 Eur in favor of the Polish company LitPolLink Sp. z.z.o. after the national litigation processes were over.

According to the Lithuania's national legislation, litigation costs mainly consists of stamp duty and litigation costs incurred by the parties of the case (payments for the legal services). In addition to this, national legislation includes exemptions for the payment of stamp duty. One of them is the defense of public interest (as it was in Communicant's case). In the present case Communicant did not have to pay a stamp duty, however, court ordered for the Communicant, as for the losing party in the proceeding, to cover litigation costs incurred by other case parties (it is a common court practice).

The initial complaint of the Association Rudamina community was submitted to the national court in 11/02/2011, the case was heard by courts of two instances; the final decision was adopted in 29/05/2013. We cannot agree with the Communicant, that an order to cover 2766,98 Eur litigation costs incurred by the party during a longer than two year proceeding is in breach with the Article 9 of the Aarhus Convention.

5. Concerning implementation of the Compliance Committees findings and recommendations', dated 04/04/2008

Communicant provides misleading information by stating that *"Requirements of motivated participation still remain in the Law on Environmental Protection (Article 7 paragraph 4 and 7 and Article 8 paragraphs 5 and 6)"*.

Actual wording of the provisions in question are as follows:

„Art. 7. Rights of public concerned and other legal and natural persons’:

Para. 4: to submit proposals (according to the law) whether the EIA is obligatory;

Para. 7: to require public authorities to organise environmental education and training, and spread of environmental ideas without any limitations.“

„Art. 8. Duties of public authorities to guarantee public concerned and other legal and natural persons’ rights:

Para. 5: to analyze and take due account of proposals of the public whether the EIA is obligatory;

Para. 6: to analyze and take due account of proposals of the public regarding the EIA and the possible impact on the environment from the planned economic activity.“

It should be added that the Communicant could not confirm that actual Lithuanian legislation is in non-compliance with the Compliance Committees' findings and recommendations when this questions arose during the CC meeting 25/03/2015. This misleading information is not confirmed until now. Moreover, Communicant states: *„a word „motivated“ was simply deleted from the law, but another criterion for „reasoned argumentation“ still remains, and the national laws are still in noncompliance with Article 6, paragraph 7 of the Convention because the public concerned must prove its participation being supported by „reasoned argumentation“, including proposals, comments, motivation statements, information requests, ect.“* It should be noted again, that Communicant provides misleading information, does not name any specific legal provisions to support such statement. These statements have no grounding because Lithuanian legislation does not require from the public to provide reasoning and explanations to their comments, proposals and statements.

Yours sincerely,

Robertas Klovas
Chancellor of the Ministry

