

August 1, 2022

Rudamina

To:

Aarhus Convention Compliance Committee

United Nations Economic Commission for

Europe

Environment Division

Palais des Nations

CH - 1211 Geneva 10, Switzerland

By e-mail: aarhus.compliance@un.org**COMMENTS BY THE COMMUNICANT OF ACCC/C/2013/98 ON THE PLAN OF ACTION FOR DECISION VII/8L (LITHUANIA)**

The Association Rudamina Community (hereafter- Communicant) would like to make the following observations regarding the process of preparation of the Plan of Action for Decision VII/8l concerning the compliance of Lithuania prepared by the Republic of Lithuania (hereafter- Decision), as requested by the Meeting of the Parties to the Aarhus Convention at its seventh session, Geneva, 18-21 October 2021.

1. According to the public information available, the responsible authorities of the Republic of Lithuania to date have not translated the findings of the Compliance Committee on communication ACCC/C/2013/98 into the official language- Lithuanian. This way, the members of the public have not been properly informed about the essence of the Decision. The official webpage dedicated to the Aarhus Convention on the internet site of the Ministry of Environment misleadingly had informed the public about communication ACCC/C/2013/98 (Lithuania) as a case pending till as late as May 18th, 2022 (i.e. no reference to Decision VII/8l was made). The representative of the Communicant raised this question when attending a public hearing organized by the Ministry of Environment on May 18th, 2022. Within a few days the Ministry updated the website with the translated text of Decision VII/8l. However, comprehensive information about ACCC/C/2013/98 and the findings has never been published in Lithuanian. In our opinion, this negatively affected the awareness of the public concerned and responsible state institutions, especially in the context of the preparation of the Plan of Action.
2. The Communicant was informed by the Ministry of Environment (on the said hearing dated May 18th, 2022) that neither the Decision, nor the Plan of Action have ever been presented and discussed on the governmental level (with other ministries, e.g. Energy, Transport, Internal Affairs that are highly relevant), or, for example, at the Parliamentary Committees (e.g. Environmental, Energy, National Security, etc.), which will be preparing and adopting the legislative changes as requested by the Decision. Again, the Communicant is of opinion that this negatively affected the quality of the Plan of Action.

3. On May 2nd, 2022 the Ministry of Environment did open a public consultation on the prepared draft action plan. The public consultation period was 20 working days (from May 2 until May 30). However, the Communicant and other members of the public found out that the dedicated website was running into technical failures. For example, it was impossible to register online for participation in the planned discussion of the plan as late as two days before its scheduled date (on May 18th, 2022).
4. It is not clear from the correspondence submitted to the Compliance Committee by the Ministry of the Environment along with the Plan of Action how successful the public consultation was, how many and what type of proposals were received from the members of the public, NGOs and companies concerned, etc. during the course of its preparation.
5. The Communicant is disappointed that the responsible Lithuanian institutions have not undertaken adequate measures regarding the notorious activity of the State Security Department (SSD) as described in communication ACCC/C/2013/98. Not only bearing in mind violation of the Convention stated in the Decision VII/8I, but also according to the existing national legislation, such an activity was and is illegal. Despite of that, and despite the information about the breach of laws and violations of the citizens rights has been publicly available since a few years ago, no investigation was started nor by Prosecutor General's Office, nor, at least, on the level of Parliamentary institutions responsible for securing democracy and rule of law. The Communicant or the associated persons concerned have never received at least formal apologies from the responsible authorities/institutions regarding the incidents that took place during 2010-2015.

Also, the Communicant would like to point out the following major drawbacks in the Plan of Action submitted by the Republic of Lithuania:

1. In paragraph 2 (a) (iv) of decision VII/8I, the Meeting of the Parties recommends that the Party concerned take the necessary legislative, regulatory and administrative measures to ensure that: “(iv) A clear requirement is established that comments submitted by the public are sent to the competent public authority itself; v) The obligation to take due account of the comments, information, analysis or opinions submitted by the public during the environmental impact assessment procedure is placed on the competent public authority”.

In our opinion, the proposed amendments of the Law on Environmental Impact of the Planned Economic Activities (see pages 10-11 in the submitted Plan of Action) **continue to secure the system created by the Party Concerned, in which the private entities related to a developer have exceptional rights to steer the process of the EIA in favor of the developer.** The amendments proposed in the Plan of Action do foresee formal submission of proposals from the public to the competent authority. However, in practice, they secure status quo, so that instead of taking the responsibility to provide qualified and objective answers, or to engage independent experts, the competent authority will in practice continue to rely on the organizer of the EIA, which, in turn, is related to the developer of a project in question by financial means/interests.

2. Concerning paragraph 2 (b) of decision VII/8I, the Communicant is of opinion that the Party Concerned avoids taking its obligation to ensure the members of the public are properly protected. Neither the Law on Intelligence Controllers, which entered into force on 1 January 2022, nor the Law of Intelligence amended on 23 December 2021 do put any explicit obligations on the SSD or any other intelligence services “to refrain from activities that could be perceived as harassment, penalization or persecution of persons seeking to exercise their rights to participate or seek access to justice under the Convention”. According to the Plan of Action, any measures foreseen are subject to the outcome

of a case under the Constitutional Court that is an open case. This way, while the institutional disputes are ongoing, no strict plan is made, and no specific timeline is provided to implement paragraph 2 (b) of Decision VII/8I. Such an attitude of the Party Concerned creates a dangerous situation in which the democratic rights of the citizens are compromised.

Finally, the Communicant expresses deep concerns about the recent legislative developments in the Republic of Lithuania. As of July 8th, 2022, new amendments of the Laws on Renewable Energy Sources and on Environmental Impact Assessment of Planned Economic Activities, respectively, are in power. The essence of these amendments is a radical facilitation of permissions for renewable energy projects initiated by private business entities. The initiative for the said amendments came from the Ministries of Environment and Energy. According to the new Law on Environmental Impact Assessment, renewable energy projects initiated and run by private business entities are now treated as “higher public interest projects” and “activity important to national security”. In practice, the amendments put energy projects as a priority over environment, public health, self-governance, other businesses, and private property.

Among the effective outcomes of the said Laws, there are following:

- No EIA procedures are required for solar energy projects of any scale. No impacts on, for example, landscape or biodiversity are assessed.
- In case shortcomings of EIA reports prepared by private entities are found, the authorities responsible for specific criteria (health, biodiversity, safety) are responsible for direct facilitation of any disagreements with the private developers directly, without the competent authority, thus limiting the practical possibilities for the members of the public to participate as early as possible.
- The State Environmental Protection Agency (the competent authority) in practice is deprived the possibility to recruit external experts, as the terms set (10 working days) make it impossible even to start the required public procurement procedures. At the same time, the Agency has very limited internal capacity and expertise in the field of energy. This way, the opportunities to objectively settle any disagreements between the developer and the public concerned are eliminated. Once no more comments/arguments are made, according to the laws valid, the project (most often initiated by private developers) must be permitted.
- The Ministers of Energy and Environment, respectively, by their decisions issued in 2022, introduced a subjective and formal criterion on the allowed turbine altitudes. This way they have automatically simplified the EIA procedures for wind power projects in the majority of the territory (about 70%) of Lithuania. Thus, the Party concerned once again has ignored the recommendations on effective public participation set in Decision VII/8I.

Sincerely,

Dr. Ramūnas Valiokas,

Association Rudamina Community