



Warsaw, 16 ^{IX}, 2018

**MINISTRY OF THE ENVIRONMENT
UNDERSECRETARY OF STATE**

Sławomir Mazurek

DZŚ-IV.465.271.2018.JM

**Ms. Fiona Marshall
Secretary to the Aarhus Convention
Compliance Committee
UN Economic Commission for
Europe
Environment Division
Room 429-2
Palais des Nations
CH-1211 Geneva 10
Switzerland**

Dear Ms. Marshall,

I am writing in reference to the reply of the Communicant to the questions of the Aarhus Convention Compliance Committee submitted on 19 Sep. 2018 in the case ACCC/C/2015/126.

In the first place I would like to draw the Committee's attention to the fact that the documents submitted by the Communicant do not contain any indication as to whether he exhausted national remedies. The 'Healthy Municipality' Association did not take part in the proceedings before the Regional Director for Environmental Protection in Białystok. The document referred to as: "3.2.3. Bakalarzewo appeal against the decision of RDOŚ" was lodged by a number of individuals represented by the professional lawyer. However, it is not possible to find out whether the person filling the appeal with the administrative authority was acting as an agent of 'Healthy Municipality' Association. The document referred to as: "3.2.1_Comments of the residents of the Bakalarzewo commune to EIA (246 signatures)" contains a number of signatures of individuals who are supporting actions of the Association but there is no signature of the person who represents the Association itself. In cases before the Provincial Administrative Court (IV-SA/Wa 308/14) and before the Supreme Administrative Court (II OSK 1076/16) the applicants were "Partnerstwo Dzikie Mazury" Association and "Prawo do Życia" Association. There is no trace of the "Healthy Municipality" Association in above mentioned cases.

The Communicant presented a large number of documents but many of them are not related to the factual circumstances material for the case ACCC/C/2015/126. As a clear example of such a document it may be mentioned the one referred to as: "Annex 3.1.5: Asking for an opinion to the Agricultural

Chamber”. The document may serve as an evidence of activity undertaken by some individuals (inhabitants of municipality) but could not be quoted as an act of “Healthy Municipality” Association. Furthermore, the inquiries submitted to the Agricultural Chamber or to the Agricultural Social Insurance Fund (KRUS – document 3.1.1) do not contain any useful information relevant for the case ACCC/C/2015/126. It is difficult to regard them as requests to involve experts which were submitted during the EIA procedure.

Some of the documents presented by the Communicant are named (labelled) in a misleading way. An example of such document is the one referred to as: ”Annex 4.3.1: Evidence of manipulation of information by the administration and the investor”. The title, given by the Communicant, may give false impression about the content of this document. However, it actually presents a letter of explanation of Podlaski Voivode addressed to the lawyer representing inhabitants of the Bakalarzewo Municipality concerning the information about correspondence with the Investor and remarks made by some individuals. Labelling that document as an “evidence of manipulation” should be regarded as a manipulation itself. In my view, documents presented by both sides should be given titles which reflect their original content and not the one given by the Communicant or the Party concerned. Another example of a misleading labelling is the document referred to as: “4.3.2: Legal suggestions of the investor to the Voivode”. The document contains answers to some questions related to the case. However, it does not contain a reference and it is impossible to find out who is its addressee, who is the author of the letter and questions contained herein as well as who is the author of the response. Another document with misleading label in relation to its content is the one referred to as: “4.3.7: Voivode is not required to consult”. However, there is nothing in the content of this letter about a lack of requirement of the Voivode to consult the Substitute Order. In fact, in this document Podlaski Voivode informs Mr. Przyborowski about the procedure of consultation related to the Substitute Order and in particular about the applicable time limits. The document provides also the information about the acceptance by the Voivode of the remark submitted by the public concerning not enough time for consultations. It is worth underlining that in response to those concerns the Voivode decided to carry out the consultations once again, allowing another 21 days for submitting comments.

In question no. 5 the Committee asked about any evidence that “Polish authorities explained that it is the EU that forced them to hasten project realization under the pressure of losing EU funds.” In reference to this question, the Communicant filled a document referred to as: “5.1: Justification to the resolution of commune council regarding EU funding pressure”. The above mentioned document, however, does not indicate that the Polish authorities in any way informed anybody that the EU forced them to put a time pressure on the implementation of the project. It is a common knowledge that EU funds for a given project are available only for certain period of time (date for the eligibility of expenditures). It is not surprising that the Investor was determined to finish the administrative proceedings and construct the electric power line before the deadlines set by the EU law. Nevertheless, this not substantiated allegation cannot serve as an explanation for violating the law by omitting relevant procedures. It must be underlined that the documents presented by the Communicant do not support any pleas as to the alleged infringements made by the Investor. Moreover, in my view, the document referred to as: “5.2: Letter_LitPolLink_to_Parliament” may not serve as an evidence of the EU forcing Polish authorities to hasten the project. It is not a document that was filled in any administrative procedure but rather should be treated as information for the Lithuanian Parliament about some possible scenarios and some factors that play a key role in the investment. It is also accompanied with a preliminary estimation of works that necessarily have to be repeated and carried out on the Polish side upon changing the power line route. Therefore, it is irrelevant to the ACCC/C/2015/126 case.

Lastly, bearing in mind that the Communicant did not provide any response to the question no. 6 of the Aarhus Convention Compliance Committee, the allegations concerning “intimidation by employees of the Internal Security Agency” should be treated as not substantiated in any way and accordingly dismissed.

best
PODSEKRETARZ STANU
[Signature]
Sławomir Mazurek

