II OSK 1076/15 – SAC Judgment

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Court	Supreme Administrative Court	
Judges	Andrzej Gliniecki /President/ Jerzy Stelmasiak Tomasz Zbrojewski /Rapporteur/	
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Related signatures	IV SA/Wa 308/14 – Judgment of VAC (Voivodship Administrative Court) in Warsaw from 2014-09-25	
Complained authority	Environmental Verifier	
Content of the judgment	Cassation appeals were dismissed	
Established regulations	OJ 2013 No. 0 item 1235; art. 62 par. 1 point 1 a, b and c *Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments - consolidated text.* OJ 2013 item 267 art. 15 *Act of June 14, 1960. The Code of Administrative Procedure - consolidated text.* OJ 2003 No. 192 item 1883 par. 3 *Regulation of the Minister of Environment of October 30, 2003 on the acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels.*	

SENTENCE

Supreme Administrative Court composed of: President: SAC judge Andrzej Gliniecki SAC judges Jerzy Stelmasiak mem. SAC Tomasz Zbrojewski (rapp.) Secretary and Judge Senior Assistant Łukasz Pilip after diagnosis on 20 July 2016 at the hearing in the General Administrative Chamber the case of cassation appeals of the National Association "[...]" based in R. and the Association "[....]" based in G. from the judgment of the Voivodship Administrative Court in Warsaw of 25 September 2014 file signature IV SA/Wa 308/14 in the case of complaints from the Association "[...]" based in G., The National Association [...] based in R. and B.W. for the decision of the General Director of Environmental Protection of [...] December 2013 No. [...] on determining the environmental conditions for the project dismisses cassation appeals

JUSTIFICATION

II OSK 1076/15

J U S T I F I C A T I O N

By a judgment of 25 September 2014, the Voivodship Administrative Court in Warsaw dismissed complaints of the Association "[...]" based in G. [...] Association [...] based in R. and B.W. on the decision of the General Director of Environmental Protection (hereinafter “GDEP”) of [...] December 2013 on environmental conditions for the project.

In the justification of the verdict, the Court of first instance adopted the following factual and legal circumstances:

Regional Director of Environmental Protection in Bialystok (hereinafter: RDEP in Bialystok), by decision of [...] July 2013, described the environmental conditions for the project entitled. "Construction of a 400-kV double-circuit overhead power line Ełk - Polish border".

An appeal against the above decision was made by B. W., M. P., J. K., H. K., W. Z., J. G., W. O., S. F., K. B., S. S., W. K., B. G. and the Association "[...]".

After consideration of appeals, the General Director for Environmental Protection, by decision of [...] December 2013, annulled the contested decision of the first instance authority in 23 points and ruled in this respect. Remainder part of a decision of the first instance authority he retained in force.

The authority indicated that the limit values for electromagnetic radiation for places accessible to the public were set in the ordinance of the Minister of the Environment of October 30, 2003 on acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels (OJ of 2003 No. 192, item 1883): 10 kV/m for an electrical component and 60 A/m for the magnetic component at the frequency of fields emitted by power lines 50 Hz. However, for residential areas, the electric field strength of 50 Hz cannot exceed value - 1 kV/m, and the magnetic field - 60 A/m.

The information included in the report shows that both during the construction and operation of the line, the intensity of the electrical and magnetic components outside the designated technological strip with a width of 70 m (35 m each side from the line axis) will not exceed the admissible values. However, in this strip, it is not allowed to locate residential buildings, where the electric field strength may exceed the value of 1 kV/m.

The appeal body indicated that the width of the technological strip designated for the investment in question was determined based on the calculations presented in the environmental impact assessment report. He pointed out that the area of the technological strip is not identical to the area of exceedance of environmental quality standards in the field of electromagnetic field emission and noise, because in many places these values may be lower than the permissible ones, and the technological strip is also an area needed for construction and maintenance works and in emergency situations.

Contrary to an appellants' suggestions, in the absence of exceedances of environmental quality standards outside the designated area of 70 m (2 x 35m), there are no legal grounds, as well as no economic justification for determining the technological corridor 260 m wide (2 x 130 m).

The authority said that the permissible electromagnetic radiation limits were set by regulation of the Minister of the Environment of 30 October 2003 in agreement with the minister competent for health, in accordance with the statutory delegation referred to in Article 122 par. 1 of the Act of 27 April 2001 on Environmental Protection Law (OJ of 2008 No. 25, item 150, as amended, hereinafter referred to as "EPL"). Thus, these levels consider the medical aspects of the interaction of electromagnetic fields on the human body and are also applicable to high risk groups, including children. Permissible levels of electromagnetic fields that may occur in the environment in places accessible to people have been established assuming that the continuous presence of people of any age and state of health - in areas with lower levels - cannot have negative health effects for them.

As for the noise impact of the line, the authority said that the acoustic noise level related to the operation of 400 kV power lines during good weather is comparable to the acoustic background level. Most often it is within 32-38 dB at 15 m from the line. These values are lower than the values referred to in the regulation of the Minister of Environment of June 14, 2007. regarding permissible average noise levels in the environment (OJ of 2007 No. 120, item 826, as amended).

He also stressed that during proceedings aimed at issuing a decision on environmental conditions, the first-instance authority requested the State Sanitary Inspector in Bialystok and the State Sanitary

Inspector in Olsztyn to express an opinion on the scope of their jurisdiction. Sanitary authorities respectively, by letters of 29 May 2013 and 16 May 2013, positively evaluated the conditions for the implementation of the project. Thus, the conditions for the implementation of the project have been assessed by public administration authorities specialized in the will of the legislator in terms of sanitary, hygienic and health conditions, and these authorities gave a positive opinion on the implementation of the project.

In the opinion of the authority, contrary to the applicants' arguments, during the proceedings, the first instance authority analysed the impact of the planned project on health and the living conditions of people. The lack of a literal description of the investment impact on people contested by the appellants does not mean that this element has been omitted. The authority indicated that it "analysed the impact of the planned project on the environment considering all the criteria". The phrase “in particular” used in the further part of the sentence means that a catalogue of the criteria is not closed. It is noted that in the light of art. 3 par. 2 of the Act of October 3, 2008 on sharing information about the environment and its protection, public participation in environmental protection and environmental impact assessments (hereinafter "EIA") by impact on the environment should also be understood impact on human health, including the assessment of the impact of electromagnetic fields and noise.

In the present proceedings, the number of collisions with residential buildings located in the technological strip of lines was considered as one of criteria for selecting the variant accepted for implementation. It was indicated, in the decision of the first instance body, that no residential buildings exist up to 35 m from the line axis. This information is crucial due to the mentioned technological strip designated at 35 m from the line axis. It is true that the first instance authority did not specify in a decision the number of buildings, which occurs in the distance of 35 - 100 m from the line axis, however, explained that at this distance "in the analysed variant there is the smallest number of buildings, both residential and economic in relation to other variants ". The table in Part II of the report shows that in the distance of 35-100 m from the line axis in option 4 there are 13 residential buildings, while in the case of other options, there are: in the case of option 2 - 16 buildings, in the case of option 3 - 23 buildings, in the case of option 5 - 27 buildings. Therefore, the findings of RDEP in Bialystok made in the decision remain valid and it does not matter that the exact number or location of buildings within the range of 35-100 m is not indicated.

The authority also stated that the case documentation shows that the selection of the recommended option 4 was preceded by a detailed multicriteria analysis, which enabled the selection of the optimal variant, considering different criteria having a significant impact on the implementation and functioning of the chosen solution. This option is the most beneficial in terms of environmental, economic and social impacts, including consequences for human health and life. Route of the planned line according to option W4 between point B - H marked on the graphical annex to the report, including a section that runs, among others, by the municipality of Bakałarzewo, is based on the route developed in 1997-2000, partly introduced into the planning documents of municipalities and voivodships. A local community was made aware of the route of the 400-kV power line since 1997.

As for the risk of failure, authority stated that it occurs in each of the presented variants to the same extent. However, bearing in mind, that in the case of the variant chosen for implementation, in the strip of 35 m from the line axis there is no housing development, the operation of the proposed 400 kV line will not cause a nuisance to the existing housing.

Taking into account that the jurisdictional powers of the appeal authority are not limited only to checking the legitimacy of the allegations raised against the decision of the first instance authority, but also to a comprehensive analysis of the case files and substantive control of the decision of the first

instance authority, the appeal authority stated that the decision of the first instance authority require reformation in respect of imposed conditions for the implementation of the project. After analysing the evidence, the appeal authority shared the view of RDEP in Bialystok regarding the establishment of environmental conditions for the implementation of the project. However, bearing in mind, that the essence of the decision on environmental conditions is to establish in its viewpoint a specific, enforceable conditions and requirements that will have a real impact on the implementation of the planned investment, due to excessive vagueness, imprecision or repeating the conditions of project implementation specified by the first instance authority the appeal body overturned in part the decision under review and in this respect ruled on the merits of the case or dismissed the proceedings of the first instance authority.
Against the above decision the [...] Association [...] and Association "[...]" brought action before a Voivodship Administrative Court in Warsaw. Mentioned complaints were registered under reference number IV SA/Wa 308/14.

In addition, the complaint against the above decision brought by B. W. Skarga was registered under reference number IV SA/Wa 439/14.

[...] Association “[...]" alleged violation of articles 7.8, 77 § 1.107 § 3 of CAP (Code of Administrative Procedures) in connection with:

- art. 62 par. 1 point 1b in connection with art. 66 par. 1 point 7 c of the EIA Act by completely ignoring the impact of investment on tangible goods, the more so because the authority did not even specify how this concept is understood and, inter alia, M.S. admitted that he is not a specialist in this area. The above-mentioned deficiency cannot be overcome by the VAC, which controls the decision and is bound by it without being able to go beyond its justification.

- art. 62 par. 1 point 1a in connection with art. 66 par. 1 point 7a of the EIA Act by assuming that the impact on health and living conditions of people comes down to control whether the investment does not violate existing standards (in addition not based on the current level of knowledge) in a situation where the real impact should be assessed, especially on children exposed to increased risk of leukaemia, which M.S., one of the authors of the report, confirms, among others, in his publication.

- art. 66 par. 1 point 8 of the EIA Act by omitting the cumulative impacts of electromagnetic fields of the existing near power line and mobile telephony base stations which falls under the superposition with the field emitted by a planned power line.

- art. 38 and 74 par. 1 of the Polish Constitution by issuing a decision without taking into account the protection of human life because both, the report and the jurisdiction itself, do not respect the latest state of scientific knowledge regarding the impact of investment on human life, especially on children (leukaemia), and are based on a norm drawn up in 70 of the last century.

The association "[...]" filed for annulment of a contested decision of GDEP and the previous decision of RDEP in Bialystok and to award the costs of proceeding to the Association according to prescribed standards. In the Association's opinion, the decisions issued in the present case do not sufficiently consider the main aspect of the environmental impacts of high-voltage transmission lines, it means the impact of EMF’s electromagnetic radiation on human health. It suffered that the standard presented by the authority is far unequal to the norms related to the "precautionary approach" presented by the Association in the Swedish company's approach [...]. It stated that the Polish standard is stricter than the ICNIRP guidelines for the HV line, but far from the more progressive standards. The ICNIRP limit value for magnetic fields at μT applies to short-term exposure, but most countries have adopted the

ICNIRP threshold for long-term exposure. According to the Association, the threshold 100 μT set by ICNIRP, and even a stricter limit value of 75 μT from the Polish standard, does not protect public health. Some countries have adopted more restrictive norms, regulations and rules than Polish: Argentina, Sweden, Great Britain, Switzerland. Some of these jurisdictions have set thresholds for children's exposure, most often at a fraction of μT. Others have provided a limit value (10-25 μT) at the edge of the line's corridor.

In addition, according to the Association, the authority violated art. 7 and 8 of CAP in connection with the lack of an accurate explanation of the actual facts of the case and failure to take into account a properly understood social interest and a legitimate interest of citizens, thus breaching the principle of deepening citizens' trust in the State Authorities and undermining the determinants of legal culture.

In response to complaints, the General Director of Environmental Protection asked for their dismissal. He submitted that the applicants' questioning of the decisions results not from the real risks and deficiencies in the contested decision but mostly from the applicants' reluctance to the planned investment.

At the hearing on 11 September 2014, the Court ordered a merger of cases with the file reference number IV SA/Wa 308/14 and IV SA/Wa 439/14 for joint recognition and settlement and ordered that mentioned cases will be continued under file reference number IV SA/Wa 308/14.

By dismissing the complaint, the Voivodship Administrative Court in Warsaw decided that the contested decision does not violate the law.

The court stated that the proceedings in this case had been carried out in accordance with the law. The collected evidence was correctly assessed, and logical conclusions were drawn from it, which appeared in the extensive justification of the contested decision. The appeal body carried out the re-trial and as a result made concrete changes to the examined decision of the first-instance authority.

At first the Court noted that under the principles of sustainable development there is not only environmental protection, but also due care for social and civilization development, associated with the need to build appropriate infrastructure (e.g. power lines) necessary for - considering the civilization needs - human and individual communities live. Therefore, an idea of sustainable development includes the need to consider different constitutional values and their proper balance.

Referred to the individual charges presented in the complaints, the Court stated that the permissible electromagnetic radiation limits were set by regulation of the Minister of the Environment of 30 October 2003 in agreement with the minister competent for health, in accordance with the statutory delegation referred to in Article 122 par. 1 of EPL. Thus, these levels consider the medical aspects of the interaction of electromagnetic fields on the human body and are also applicable to high risk groups, including children. Permissible levels of electromagnetic fields that may occur in the environment in places accessible to people have been established assuming that the continuous presence of people of any age and state of health - in fields with certain levels - cannot have negative health effects for them. Permitted levels of electromagnetic radiation in the environment co-create (under art. 83 par. 2 of EPL) environmental quality standards, in accordance with art. 82 of EPL, one of the basic tools to implement the protection of environmental resources. An implementation of the project, while maintaining the established technological strip of the area and thus the permissible levels of electromagnetic radiation in the environment, will not significantly affect the health of people who will not "permanently" stay in the power line technological strip. The case file shows that during proceedings aimed at issuing a decision on environmental conditions, the first-instance authority appealed to the State Sanitary Inspector in

Białystok and the State Sanitary Inspector in Olsztyn to express an opinion on hygiene and health requirements. Both authorities gave a positive opinion on the conditions for the implementation of the project, which means that the project has been subjected to the assessment by public administration bodies specialized in the field of sanitary, hygienic and health conditions, and these authorities gave a positive opinion on the implementation of it.

Referred to the charge of alleged violation of art. 66 par. 1 point 8 of the EIA Act, due to the omission in the course of the proceedings of issues related to the accumulation of impacts in the field of electromagnetic field emissions from the planned 400 kV power line, the Court noted that GDEP, acted in accordance with art. 136 of CAP, carried out an additional explanatory proceeding during the appeal procedure, under which the investor was requested by a letter dated October 21, 2013, to clarify the doubts contained in the report on the impact of the project on the environment. Doubts concerned, among others cumulative impacts of the planned investment with other projects. A supplement provided by the investor in a letter dated October 25, 2013, allowed the adjudicating authority to determine that due to the diverse range of field frequencies generated by overhead power lines and emitted by antennas of mobile telephony base stations, it is inadmissible to speak about accumulated impact on the environment. Antennas of mobile telephony base stations generate electromagnetic fields with a frequency exceeding 900 MHz, the properties of which are different from the 50 Hz electromagnetic field generated by overhead lines. Electromagnetic fields with a frequency of 50 Hz and radiation with a frequency exceeding 900 MHz should be treated as two different phenomena that do not accumulate. Because of such significant differences in the frequency of electromagnetic fields, there are different environmental standards set out in the ordinance of the Minister of the Environment of October 30, 2003 on acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels, determined depending on the type of source that generates them. Therefore, there is no standard in the applicable provisions to which the cumulative effect of the electromagnetic fields originating from completely different sources would be referenced.

Consequently, the violation pointed out by the applicant Association cannot be referred to the present case, due to the lack of scientific justification, as well as a specific standard to which the cumulative effect of the electromagnetic field from overhead power lines and cellular telephony base stations would be referred.

Cumulative repercussions of the planned investment with other projects was devoted to chapter 9.2 part IV of the report on the project's environmental impact dated June 2012. The report's authors have juxtaposed intersections and approximations of the power line with other planned or existing investments in individual municipalities, in a buffer of 500 m and described cumulative impacts at the stage of construction, operation and liquidation of the 400-kV line. Detailed analysis of the cumulative impact of the electromagnetic field generated by the subject line 400 kV with existing or planned over 110kV overhead lines (intersection or close-up) in the area of the investment was included in the study: "Analysis of the environmental impact of the electromagnetic field produced by crossed overhead lines : an existing 110 kV and proposed 400 kV on the route Ełk – Polish border", made by the Bureau “[...]" in December 2012, constituting Annex 4 to the letter of the investor's plenipotentiary dated October 25, 2013. Performed for the a/m needs calculations indicate that near intersections and close ups of the 400-kV line with 110 kV lines, the intensity of the magnetic field and the electric field strength will not exceed the permissible value for places accessible to people (E = 10 kV/m, H = 60 A/m).

The court of first instance stated in addition that the allegation to require the investor to prove lack of threat from the proposed power line, in terms of the impact of the electromagnetic fields emitted by it on human health, should not be taken into account, since the documentation of the case shows that the implementation of the questioned project keeping the technological strip (70 m, means 2 x 35 m from

the line axis in both directions) will not have a negative impact on the environment, including human health. In addition, in this type of procedure, it is not expected to study people's health in terms of the overall impact of electromagnetic fields on the human body. Nevertheless, in order to allay the concerns of local residents about health and striving to take measures to limit the presence of people in the range of electromagnetic fields of over-normative levels, applying the precautionary principle, the first instance authority imposed an obligation to perform post-implementation analysis in the field of noise and electromagnetic field (point IV of the decision about environmental conditions). The proposed post-implementation analysis will include measurements of the most important impacts resulting from the operation of the enterprise.

The court pointed out that in the report on the environmental impact of the planned 400 kV line Ełk - Polish border, 6 investment location options and the characteristic of zero option (which is to withdraw from the building of 400 kV line) and the cable method (underground) were presented.

As for the zero option, it is the most favourable option in terms of environmental implications; however, its adoption would mean the abandonment of investment and leaving a large region of Poland without sufficient security in electricity supply (consequences of which are also difficult to predict in terms of environmental impact) and failure to implement one of the key projects with the rank of a trans-European connection (page 38 part I of the report). Such a solution, especially in the current geopolitical situation, would be highly unfavourable for the country and its energy security.

The case file (including the impact report) shows that the implementation of the proposed project using the cable method would entail a greater scale of negative impacts on the environment than the overhead line, and this was the main reason for the selection of the implementation of the project in the form of an overhead line. Such a line could have a very negative effect, e.g. in terms of violation of water relations and impact on the soil.

The prepared environmental impact assessment together with the draft document has been subjected to review by environmental and sanitary inspection authorities, and then, after considering authorities opinions and agreements, for public consultation. As the authority rightly pointed out in the defence, everyone interested in the proceedings had the opportunity at the end of May and June 2009 to submit his comments and requests to the documents submitted for review.

Referring to allegations of complaints regarding violation of the rules of administrative proceedings, the Court finds that the evidence, in accordance with art. 7 and 77 of CAP, was collected and considered carefully, which was reflected in the justification of the contested decision, meeting the requirements of art. 107 § 3 of CAP.

The [...] Association based in R. and the Association "[...]" filed a cassation appeal against the above judgment.

The Association "[...]" raised allegations of violations:

- art. 62 par. 1 point 1a of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in connection with art. 38, 74 par. 1 of the Polish Constitution in conjunction with art. 174 points 1 of LACP (Law of the Administrative Courts Procedure) by indicating in the judgment that the assessment of health and life hazard refers only to whether people can stay in electromagnetic fields of over-normative values set in the standard, which guarantees that there is no possibility of adverse health effects on people and especially children living near the planned investment;

- art. 62 par. 1 point 1b of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in connection with art. 174 point 1 of LACP by not defining the impact of the investment on tangible goods, the more so as the judgment and decisions do not define the concept of tangible goods, which determines that such a specialized analysis carried out by the person having the applicable rights has not been performed. The above violation has a significant impact on the outcome of the case, the more so as the SAC cannot even consider this issue for the reasons given above;

- art. 66 par. 1 point 7a of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in connection with art. 174 point 1 of LACP by adopting the findings contained in the report, which do not take into account the actual impact of the planned investment on human health and life because none of the people preparing the report have knowledge in this area and, what is most important, is not based on the current state of knowledge, but only on the standard which is not known by whom and based on which scientific evidence was drawn up;

- art. 66 par. 1 point 7c of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in connection with art. 174 point 1 of LACP by stating that the investment does not affect tangible goods without specifying how to understand this concept in the broad sense of the word in a situation where it is undisputed that the investment has such an impact, because it will significantly reduce the value of the property located next to it. The applicant requested SAC to indicate how the authorities define the concept of tangible goods and who prepared the appropriate expertise of this impact and what are his possessed qualifications in this matter.

- art. 66 par. 1 point 8a and c of the Act of 3 October 2008 of the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in conjunction with § Regulation of the Minister of Environment of October 30, 2003 on acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels in connection with art. 174 point 1 of LACP by accepting, contrary to the position of the Minister of the Environment, that the laconic statements of the investor (not the authority) that the electromagnetic fields of the planned investment and existing nearby mobile telephony base stations cannot enter into superposition without scientific explanation, deserves for approval. In fact, it is not known where and when the investor managed to carry out scientific research confirming that the 50 Hz electromagnetic field cannot be summed with electromagnetic fields coming from high frequency or microwave frequency range transmitters.

- art. 141 § 4 and 3 § 1 of LACP by failing to fully control both decisions and thus accepting the investor's arguments (not the authority) that the electromagnetic fields of the line and the base station cannot be cumulated, although the regulation referred to in the justification not only confirms that the phenomenon of superposition occurs, but gives the formula to make the appropriate calculations. In addition, VAC omitted one of the most important issues, namely the impact on tangible goods, and this in a situation where the authorities completely ignored this very important circumstance.

In support of its cassation appeal, the author pointed out that it is not possible to agree with the VAC and authorities point of view that the assessment of the investment's impact on health and human life is limited only to determine whether this negative impact can only be caused by being in the electromagnetic fields of over-normative values, which are called in the Regulation of the Minister of Environment of October 30, 2003 on acceptable levels of electromagnetic fields in the environment and

ways to check compliance with these levels. In fact, a regulation published more than 11 years ago is to prejudge that the investment will not have negative effects. Conducting an environmental impact assessment in relation only to mentioned standard may expose health and life of people, and therefore the assessment in this area should be made by people with medical education who deal with such subjects in the European Union and thus have knowledge allowing them to assess the risks associated with the construction of such a powerful line.

In an Association's opinion, the lack of defining the concept of impact on tangible goods and the failure to indicate any expertise of a person possessing the relevant powers in this respect determines that mentioned issue, obligatorily required by the regulations, was omitted and cannot be supplemented by the SAC. A laconically statement of the investor that the electromagnetic fields of the power line and mobile telephony base stations cannot be cumulated is contradictory to the scientists and the Minister of the Environment points of view. The Minister of the Environment repeatedly acknowledged the need to add them even more so that § 4 and Annex 3 of the Regulation of the Minister of Environment of October 30, 2003 on acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels confirm such a possibility.

In establishing such allegations, the Association [...] requested that the judgment under appeal should be set aside in its entirety and the case be referred for trial by the Court of first instance again, and that the costs of proceedings be awarded in accordance with the prescribed standards.

In the cassation appeal filed by the Association "[...]", allegations of infringement of procedural law have been raised, that is:

- art. 1, art. 3 § 2 point 1 and art. 145 § 1 point 1c of LACP and art. 15, art. 136 and art. 138 § 2 of CAP in connection with art. 63 par. 1 and 2, art. 66 par. 1 points 1-20, art. 77 par. 1 points 1 and 2 and art. 79 par. 1 of the Act of 3 October 2008 of the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments, and art. 6 par. 1-10 of the Convention of 25 June 1998 on access to Information, public participation in decision-making and access to justice in environmental matters due to omitting in resolution an analysis of the fulfilment of the obligations by the appeal authority in the procedure for issue the decision on environmental conditions which has led to a breach of rules of procedure and might have affected the outcome of the case;

- art. 1, art. 3 § 2 point 1, art. 134 § 1 and art. 145 § 1 point 1c of LACP by omitting in resolution the allegation of violation of the provision of art. 33 and 34 of the Act of April 16, 2004 on Nature Conservation (OJ of 2013, item 627) in connection with art. 81 par. 2 of the Act of 3 October 2008 of the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments, which has led to a breach of rules of procedure and might have affected the outcome of the case;

- art. 1, art. 3 § 2 point 1, art. 134 § 1 and art. 145 § 1 point 1c of LACP by omitting the analysis of how the bodies of both instances comply with the obligation to declare by them that location of the project complies with the provisions of the local spatial development plans for all municipalities located along the entire investment route, which means lack of fulfilling an art. 80 par. 2 of the Act of 3 October 2008 of the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments, which has led to a breach of rules of procedure and might have the outcome of the case.

In the explanatory statement of the cassation appeal, its author argued that the proceedings provided for

by the Act of 3 October 2008 of the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments is an interdisciplinary proceeding, combining a wide variety of procedural and substantive elements, and as a result create a special administrative procedure under the current legal status. This proceeding is aimed at balancing conflicting interests of the investor, local communities from the point of view of implementation of the policy of sustainable development and individual interests of citizens in investment impact. Such a proceeding is, by its very nature, long-lasting and complicated, which also indicates the need for special care by the body conducting it, as well as by the authority of the second instance. This proceeding is also guided by objectives separate from other proceedings, because its objectives can be derived from direct constitutional regulations in the field of environmental protection, it means from the provisions of art. 5, art. 31 par. 3, art. 68 par. 4, art. 74 and art. 86 of the Polish Constitution. The proceedings regarding the environmental impact assessment of projects have all the features of direct regulation aimed at implementing the constitutional principle of sustainable development into the practice of the investment process and the international obligations of the Republic of Poland resulting from, inter alia, the Convention of 25 June 1998 on access to Information, public participation in decision-making and access to justice in environmental matters and the Convention of 19 September 1979 on the conservation of European wildlife and natural habitats. The court did not take into account in its decision that the model procedure for issuing decisions on environmental conditions assumes not only the multi-stage type of the entire procedure (screening and scoping stage), but also the need to prepare a report on environmental impact, verification of findings of the report by the authorities of both instances and specialized bodies, i.e. the State Sanitary Inspector and, above all, public participation at every stage of the procedure. The procedural consequences arising from such a model of environmental procedure are so far-reaching that the general solutions provided for in art. 136 and art 138 of CAP for the manner of recognition of appeals by the second instance authority, do not correspond at all to the specifics of this procedure.

The Voivodship Administrative Court in Warsaw underlining that: "the appeal body carried out a re-trial and as a result made specific changes to the examined decision of the first instance body", omitted that the re-examination of the case should be primarily related to the obligation for the investor to re-report on the impact on the environment and the arrangements of its scope with the State Voivodship Sanitary Inspector; preparation of a re-report on the impact on the environment; conducting a consultation procedure with the public of the proposed decision; special mode of notifying parties to proceedings, it means in the mode of the provision of art. 49 of CAP and art. 3 par. 1 point 11 of the Environmental Law; obligations resulting from the Polish Convention of 25 June 1998 on access to Information, public participation in decision-making and access to justice in environmental matters, in particular its article 6 par. 1 - 10. Therefore, conducting the evidence proceedings by the second-instance authority and issuing a substantive decision in the matter, in accordance with the requirements of the environmental law, calls for compliance with the specific requirements indicated above. Bearing in mind the functions of the provisions of art. 15, art. 136 and art. 138 of CAP it cannot be overlooked that issuing a reform decision by GDEP required the full procedure described in the environmental law. However, conducting additional evidence proceedings should be a normal practice before the second instance authority, but the requirements of the environmental procedure and the necessity of substantive settlement, which assume the provisions of art. 136 and 138 of CAP in the wording in force after 11 April 2011, first of all it requires the re-creation of an environmental impact report by the investor and its subsequent revision by the state voivodship sanitary inspector (Article 77 (1) (2) of the Environmental Law). The decision of the second instance authority should also be preceded by consultations with the social party in all communes concerned or conducting an administrative hearing, which would make it possible to exhaust the requirements indicated in art. 6 par. 10 of the Aarhus Convention regarding public participation in decision-making processes. These are the logical consequences of applying the provision of art. 136 and 138 of CAP.

The Voivodship Administrative Court in Warsaw, in its decision, failed to hear the allegation of violation of the provisions of substantive law (seized at the hearing on 14 September 2014) by the authorities of both instances, means the failure to analyse in the contested decisions of both instances the question whether there are any indications at all application of art. 34 of the Nature Conservation Act and art. 81 par. 2 of the environmental law, in accordance with the premises indicated there. The authorities limited their analysis to the issue of marking the proceedings. While this is an objection sufficiently important that it could constitute a decision refusing the investor or being the basis for the implementation of the project in another variant, bypassing this valuable natural area.

In accordance with the provisions of art. 80 par. 2 of the environmental law, the authority issuing the decision on environmental conditions is required to state the location of the project with the provisions of the local spatial development plan if this plan has been adopted. The exception provided for in the second sentence of this provision does not apply to the planned project. In view of the scale of the planned investment (length approx. 111 km in the chosen variant No. 4) in the course of the proceedings for issuing the decision on environmental conditions, it was necessary to verify the arrangements for local spatial development plans in all communes through which the planned investment is to be carried out: Ełk , Kalinowo, Olecko, Wieliczki, Raczki, Bakałarzewo, Suwałki - rural and urban municipalities, Jeleniewo, Szypliszki, Puńsk and Sejny.

The authorities only partially fulfilled mentioned obligation, as only the approved local zoning plans were indicated in the decision of the first instance, omitting those communes where such plans were not adopted. Moreover, the analysis of compliance of the findings was limited to the opinion on the compliance of the investment with the local plans, without specifying detailed arrangements related to this investment. The Voivodship Administrative Court in Warsaw omitted the issue of the local spatial development plan in the municipality of Bakałarzewo, in which case the Voivode of Podlasie issued a supplementary order of 16 July 2014 regarding the local spatial development plan imposing an investment a variant of the undertaking with the complete omission of the position of the commune authorities and residents of Bakałarzewo. In the planning documents of the Bakałarzewo commune, a single OHL 400 kV line has existed for a long time, but its progress was recorded in a different place than the location variant pushed by PSE. Originally planned in a study of Bakałarzewo conditions, the version had a length of about 9 km and ran in a straight line.

In establishing such allegations, the Association "[...]" appealed to the Court for the annulment of the judgment under appeal in its entirety and refer the case back to the Court of first instance, and to order the costs of the proceedings in accordance with the prescribed norms.

In response to the cassation appeal of the Association [...] [...] S.A. has requested its rejection as inadmissible or unfounded and without reasonable grounds. The company drew attention to the deficiencies in formulation of the appeals, a lack of indication of the form of the violation of the provisions and the seemingly justification of the objections of the cassation complaint. The company also claimed that in cassation appeal, allegations of infringement of the procedural provisions were made, however, no impact of such violations on the outcome of the case was found. At the same time, the author of the response to the cassation appeal referred to individual allegations questioning their merits.

On June 30, 2016, the Association "[...]" sent a letter entitled "supplementing the grounds for appeal".

The Supreme Administrative Court scaled the following:

Cassation appeals do not have justified grounds.

According to art. 183 § 1 of the Act of 30 August 2002 - Law on Proceedings before Administrative Courts (OJ of 2016, item 718, as amended) - hereafter referred to as LPAC, the Supreme Administrative Court examined the case within the limits of the cassation appeal with considering only the invalidity of the proceedings. In the present case none of the conditions listed in art. 183 § 2 of LPAC has been occurred, hence the instance control was limited only to examining the legitimacy of the allegations raised in the cassation appeal, left beyond control compliance with other provisions of law.

In the case examined, from the judgment of the Voivodship Administrative Court in Warsaw, dismissing the complaint against the decision of the General Director for Environmental Protection of [...] December 2013 regarding environmental conditions for the project, two cassation appeals were lodged, none of which contains justified ground for cassation. Due to the different nature of the charges, cassation appeals require a separate comment.

The cassation appeal filed by the Association "[...]" with its registered office in G. was the first to respond:

The allegation of violation of art. 1, art. 3 § 2 point 1) and art. 145 § 1 point 1c of LPAC and art. 15, art. 136 and art. 138 § 2 of CAP in connection with art. 63 par. 1 and 2, art. 66 par. 1 points 1) -20), art. 77 par. 1, points 1) and 2) and art. 79 par. 1 of EIA and art. 6 par. 1-10 of the Convention of 25 June 1998 on access to Information, public participation in decision-making and access to justice in environmental matters by omitting in resolution the analysis of the fulfilment of the obligations of an appeal authority for a decision on environmental conditions, which led to violation of the provisions of the proceedings, which could have influenced the outcome of the case, did not prove justified.

The manner of formulating the complaint and its justification gives grounds for stating that the basis of its formulation lay in the conviction of the author of the cassation appeal that the procedure for establishing environmental conditions for a project should be governed by different rules than those resulting from the provisions of CAP.

The explanation requires that, according to the principle of two instances, expressed in art. 15 of CAP, each administrative case recognized and resolved by the decision of the first instance authority is - because of an appeal by an authorized entity - subject to re-examination and adjudication by the authority of the second instance. The subject of appeal proceedings is both consideration of a case and its settlement, as well as verification of the decision of the first instance authority. Filing an appeal has the effect that the appeal authority is given the opportunity to reconsider the case in which the decision of the first instance authority was made. The appeal authority is obliged to review the appeal and to issue a decision in accordance with art. 138 of CAP, making substantive and legal assessment of the contested decision. The task of the appeal authority is therefore to assess the evidence, regarding the facts found at the time of the decision issued by the first instance authority, supplemented with new factual circumstances, omitted by the first instance authority, as well as those factual circumstances that were changed after the decision of the first instance authority. Only when the appeal authority during the proceedings considers that the first-instance authority conducted the proceedings with a flagrant violation of the norms of procedural law, and did not carry out any explanatory proceedings, should issue a cassation decision. It may, however, carry out supplementary proceedings, as referred to in art. 136 of CAP, as such rights arise directly from the content of art. 136 of CAP. Therefore, it should be emphasized that the principle of the two-instance nature of the administrative procedure results in the obligation of the appeal authority to review the case. In this respect, this authority cannot be limited only to the control of the first instance decision, but it is obliged to resolve the matter in its entirety, seeking

to settle it in a substantive way. In the case examined, there were no reasons that would preclude the appeal body from adjudicating the subject matter due to the need for additional proceedings before a large-scale appeal body.

Transferring the above considerations to this case, it should be pointed out that the annulment of a decision of the authority of the first instance by the General Director of Environmental Protection in 23 points and the ruling in this regard included changes or corrective and precise nature (repeats were removed, conditions were harmonized, mistakes were corrected), or expanding the scope of protection of areas covered by the planned investment resulting from the first instance decision. What is important, the appeal authority clearly and explicitly provided the reasons for the changes, and the assessment of their nature in no way justifies the claim of a cassation appeal on the need to repeat the proceedings by the first instance authority.

Moreover, it should be noted that in formulating the above allegation the author of the cassation appeal did not show what effect the above alleged failure could have on the ruling. In the meantime, formulating a complaint under the cassation basis referred to in Article 174 point 2 of LPAC it should be pointed out that there is a causal link between the procedural defect being the subject of the cassation appeal and the first instance court judgment issued in the case, which causation, though not necessarily real, must justify the hypothetical possibility of a different outcome of the case.

On the other hand, the argument itself cited in the cassation appeal that "the model of appeal proceedings in CAP does not match the specificity of proceedings regarding environmental conditions" cannot change the assessment of the correctness of the authority of the second instance, because the administrative court examined the legality of the action, not the legitimacy of the objections parties regarding statutory solutions.

At the same time, it is worth clarifying that the provisions of the Aarhus Convention of 25 June 1998 are not normative but constitute an obligation to take necessary measures by the States Parties to the Convention in the areas covered by it. Poland has taken appropriate measures and introduced into the internal legal order standards allowing for public participation in decision-making and access to information in environmental matters (see the judgment of the SAC of 1 June 2010, II OSK 920/09).

For lack of legal reasoning should be counted the allegation of violation of art. 1, art. 3 § 2 point 1), art. 134 § 1 and art. 145 § 1 point 1c of LPAC by disregarding the allegation of violation of the provision of art. 33 and 34 of the Act of April 16, 2004 on nature conservation in connection with art. 81 par. 2 of EIA which resulted in a violation of the provisions of the proceedings, which could have affected the outcome of the case.

Referring to the allegation formulated in this way, it should be noted that - apart from the fact that the author of the cassation appeal did not indicate any specific provision of art. 33 or art. 34 of the Nature Conservation Act - it takes on a purely polemical form. The justification of the judgment under appeal, as well as the decision of the environmental protection authorities and the investor's applications clearly indicates the role of the planned power line in the context of the energy security of the country. During the proceedings, it was repeatedly emphasized that the construction of the power transmission line is aimed at strengthening the energy security of Poland, neighbouring countries and in the future creating the Baltic Electricity Ring. The planned project will ensure greater operational reliability of the National Transmission System and stable operation of the 400-kV transmission network in the central and north-eastern part of Poland. The cross-border connection between Poland and Lithuania is one of the strategic projects of Poland and the European Union. It has also been repeatedly explained that there are no alternative solutions, because carrying underground lines instead of above-ground generates not only

much higher financial costs, but also environmental losses. In the opinion of the Supreme Administrative Court, in the case of a planned investment, it is impossible to question the existence of a social interest, therefore there are no grounds for the adoption of art. 81 par. 2 of EIA.

As for the allegation of violation of art. 1, art. 3 § 2 point 1, art. 134 § 1 and art. 145 § 1 point 1c) of LPAC by omitting the analysis of how the authorities of both instances comply with the obligation for them to agree on the location of the project with the provisions of the local zoning plans in all communes located along the entire investment route, it means with art. 80 par. 2 of EIA, which led to the violation of the provisions of the proceedings, which could have influenced the outcome of the case, these allegations appear to be at least incomprehensible. An author of the cassation appeal in the first paragraph of the justification for the alleged violation of the above provision quotes its content in extenso. According to his wording, the competent authority issues a decision on environmental conditions after confirming the compliance of the project location with the provisions of the local spatial development plan if this plan has been adopted. This does not apply to decisions on environmental conditions issued for a public road, for a railway line of national importance, for Euro 2012 projects, for projects requiring a concession for exploration and recognition of mineral deposits, for investments in the terminal area, for investments related to regional broadband networks, for anti-flood structures implemented on the basis of the Act of 8 July 2010 on special rules for preparing investments for flood prevention works and for investments in the construction of nuclear power facilities or associated investments. In the second paragraph, the author of the cassation appeal indicates that "the authorities fulfilled this obligation only partially, because only the approved local zoning plans were indicated in the decision of the first instance, omitting the municipalities in which such plans were not adopted". In the opinion of the Supreme Administrative Court, there is no way in the context of the literal wording of art. 80 par. 2 of EIA to be considered that the allegation of failure to comply with the obligation, which has not been imposed by the law on the body of the act, which is invoked in the cassation clause as infringed, will be justified.

Moreover, the author of the cassation appeal accuses the Court of first instance that he disregarded the issue of the Voivode of Podlasie of 16 July 2014 regarding the adoption of a local zoning plan in the area enabling the implementation of a section of double-circuit overhead 400 kV power line Ełk-state border in the municipality of Bakałarzewo (OJ of the Podlasie Voivodship of 21 July 2014, item 2689), which regulation omits the position of commune authorities and residents, and accepts an investor variant. At the same time, the appellant categorically considered "the status of the act of law to be doubtful". Referring to that appeal, the decision appealed against to the court of first instance to establish the environmental conditions for the project was issued on 16 December 2013, that is, before the adoption of the replacement order. However, the reminder requires that the administrative court assesses the legality of the contested decision, considering the legal status as of the date of its issuance.

In the margins only, the Supreme Administrative Court considered it appropriate to explain to the author the "status" of the replacement order. According to art. 12 par. 3 of the Act of 27 March 2003 on spatial planning and development (OJ of 2012, item 647), if the commune council did not pass the study, did not proceed to change it or, by adopting a study, did not specify in it areas of distribution of public-purpose investments of national, provincial or metropolitan importance, included in the voivodeship spatial development plan, in the programs referred to in art. 48 par. 1 or in a framework study of the conditions and directions of spatial development of the metropolitan union, voivode, after undertaking activities aimed at agreeing the date of implementation of these investments and the conditions for introducing these investments to the study, calls on the commune council to pass the study or change it within the prescribed period. After the expiry of this period, the voivode draws up a local zoning plan or change it for the area affected by the omission of the commune, to the extent necessary for the feasibility of the public purpose investment and issues a replacement order in this

matter. The plan adopted in this mode has legal effects such as the local zoning plan. As a result, doubts as to the legal force of the order should be considered unfounded.

As for the allegations raised in the cassation appeal by the [...] Association "[...]" based in R., they are also unfounded:

The Association raised the allegation of violation of art. 62 par. 1 point 1a of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments in connection with art. 38, 74, par. 1 of the Constitution of the Republic of Poland. Violations of this is seen in the Court of First Instance decision that the assessment of health and life risks relates only to the determination of whether people may be in electromagnetic fields of over-normative values set out in the standard, which guarantees that there is no possibility of negative health effects for people, especially children, living close to the planned investment. In addition, the complainant censures the adoption of the findings contained in the report, which do not take into account the actual impact of the planned investment on health and human life, because none of the people preparing the report has knowledge in this area and does not rely on the current state of science, but only on the norm that "it is not known by whom and based on what scientific evidence was drawn up." Such an allegation should be considered as purely polemic.

The provision of art. 66 par. 1 point 7a of EIA stipulates that the report on the environmental impact of an undertaking should include justification of the variant proposed by the applicant, with an indication of its impact on the environment, on people, plants, animals, mushrooms and natural habitats, water and air. It regulates only the content and scope of the report. It does not regulate the verification of the findings of the report on the impact of the undertaking on the environment; requirements as to the qualifications of persons drawing up the report; the methodology of preparing a report; requirements regarding references to the standards of the current state of knowledge (science) etc. These issues are covered by the provisions of other regulations or remain unregulated. According to art. 66 par. 1 point 7a of EIA the Association's allegation is completely misunderstood, as the investor's environmental impact report prepared on the Investor's request contains justification for the variant of the investment route proposed by the Investor (Option 4), with an indication of its impact on the environment. On pages 23-35 of the fourth part of the Environmental Impact Assessment report, a multi-criteria analysis comparing all variants and showing that the Investor preferred option is the most beneficial for the environment, including health and life of people, is presented. The Environmental Impact Assessment of the Investment has been prepared correctly, also meeting the requirement specified in art. 66 par. 1 point 7a of EIA.

In addition, it should be pointed out, and it what was rightly pointed out in response to a cassation appeal, that the Association did not provide any evidence in support of its allegations against the content of the report that could counterbalance the evidential value of the Environmental Impact Report or even undermine the credibility of the report.

It cannot be abstracted from the fact that the report on the impact of investments on the environment has been prepared based on the current state of knowledge and applicable law. People who are part of the team of authors of the report on the impact of investments on the environment have knowledge and experience, which is confirmed by the scientific degrees, which was necessary to develop such a demanding document, which is the report on environmental impact. Each element of the report on the impact of investments on the environment has been developed by people who have knowledge and experience in a given field, which guarantees its reliability. Therefore, the condition specified in the jurisprudence of administrative courts was respected as to persons who could draft reports on the impact of projects on the environment (see judgment of SAC of 19 January 2012, II OSK 615/11). The

conclusions of a report drawn up by persons with relevant knowledge cannot be combated by the Association only by means of negation, not supported by any specific arguments, because this way of arguing deprives the dispute of its juridical character.

The court of first instance rightly observed that the permissible electromagnetic radiation limits were set by regulation of the Minister of the Environment of 30 October 2003 in agreement with the minister competent for health, in accordance with the statutory delegation referred to in art. 122 par. 1 of EIA Act. A requirement to establish standards in agreement with the Minister of Health entitles the claim that the regulations on permissible levels of electromagnetic fields in the environment and ways to check these levels consider the medical aspects of electromagnetic fields impact on the human body and apply to children. Permissible levels of electromagnetic fields that may occur in the environment in places accessible to the public have been established assuming that the permanent presence of people of any age and health condition - in fields with specific levels - cannot entail negative health effects for these people. Permitted levels of electromagnetic radiation in the environment co-create, under art. 83 par. 2 of EIA, environmental quality standards being in accordance with art. 82 of the EIA Act, one of the basic tools for implementing environmental protection. The implementation of the project, while maintaining the established technological zone of the area and thus the permissible levels of electromagnetic radiation in the environment, will not significantly affect the health of people who will not be "permanently" in the power line technological strip. The case file shows that during the proceedings aimed at issuing a decision on environmental conditions, the first-instance authority appealed to the State Voivodeship Sanitary Inspector in Białystok and the State Voivodeship Sanitary Inspector in Olsztyn to express their opinion on the scope of hygiene and health requirements. These authorities gave a positive opinion on the conditions for the implementation of the project. Thus, it should be stated that the conditions for the implementation of the project have been assessed by public administrations specialized in the field of sanitary, hygienic and health conditions, and these authorities gave a positive opinion on the implementation of the project.

The Supreme Administrative Court believes it is not allowed to question the decisions of the environmental protection authorities, and then the verdict of the administrative court solely based on its own conviction about the defects of the decisions. Referring to the unspecified "global research" in complete detachment from the standards regulating the levels of electromagnetic fields is not within the limits of the legal dispute.

An important problem raised in the cassation appeal of the Association "[...]" that requires addressing is the issue of the accumulation of electromagnetic fields.

First of all, it should be pointed out that the report on the impact of investments on the environment includes an extensive description of forecasting methods used by the investor (included on pages 36-42 of part IV of the Environmental Impact Assessment Report) and a description of the expected significant impacts of the investment on the environment, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts resulting from the existence of investments and emissions (in particular Part IV, Chapter 9 of the Environmental Impact Assessment Report, entitled "Description of expected significant impacts of the planned project on environment, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impact "), which corresponds to the requirements of art. 66 par. 1 point 8a and c of EIA Act

The impact of the electromagnetic field generated by the investment and the possible accumulation of investment impacts with other projects were the subject of the explanatory proceedings. By letter of October 21, 2013, GDEP called on the investor to clarify doubts in this respect. In chapter 9.2 of part IV

of the report on the impact of the investment on the environment there is a summary of intersections and approximations of investment with other projects existing and planned in individual communes in a buffer of 500 meters. A detailed analysis of the cumulative impact of the electromagnetic field generated by the investment with existing or planned 110 kV overhead power lines was presented by the Investor in a letter dated October 25, 2013. This issue was examined and explained in detail, thus raising the allegations of defectiveness of the investment impact assessment on the environment in this area is unfounded, especially as during the proceedings before RDEP and GDEP, the Association did not provide any evidence (e.g. own expertise or scientific research) that could undermine the findings made by these authorities. It has not been also indicated that in electromagnetic radiation area of the intended investment are any sources of electromagnetic radiation, that could lead to accumulation, other than those discussed in the report. Of course, from different, previously unforeseen causes in some places, accumulation of electromagnetic radiation may occur. However, determining of such a circumstance will be possible after starting the installation. Therefore, according to the content of art. 122a par. 1 of EIA it was pointed out that the co-occurrence of electromagnetic fields imposes on users of installations that emit electromagnetic fields the obligation to perform measurements of these fields after the installation or equipment has been used or in the event of a change in the operating conditions of the installation or device. Annex No. 3 to the Regulation of the Minister of Environment of October 30, 2003 refers to the operation phase of the installation emitting an electromagnetic field when it is checked whether acceptable levels of the electromagnetic field are being met. The above is also confirmed by the letter from the Minister of the Environment, which is a response to the interpellation of September 20, 2012, attached to the letter constituting the supplementation of the grounds for cassation. In point 5 of this letter explicitly referring to art. 122a of EIA, it was pointed out that the co-occurrence of electromagnetic fields imposes on users of installations that emit electromagnetic fields the obligation to perform measurements of these fields after the installation or device has been used or when the operating conditions of the installation or device have changed.

It follows from the above that the position of the Court of first instance, that there is no norm in which the effect of cumulative electromagnetic field effects coming from completely different sources could be relied upon, is not accurate, however, does not affect the outcome of the case. There is no reason to question the content of the environmental impact report as well as the findings made by the adjudicating authorities in the case.

It cannot be also considered as justified allegation of violation of art. 62 par. 1 point 1b) and c) of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments by not identifying the impact of investment on tangible goods, including the value of real estate.

It is not disputed, that the provision of art. 62 par. 1 point 1b of EIA imposes an obligation to carry out analyses as well as to assess the direct and indirect impact of a given project on tangible goods as part of the environmental impact assessment. However, in accordance with art. 66 par. 1 point 7c of EIA report on the impact of the undertaking on the environment should include the justification of the variant proposed by the applicant, with an indication of its impact on the environment, particularly on tangible goods.

In the context of the provisions which, in the author of the cassation appeal opinion have been violated, the issue of the impact of investment on tangible goods were discussed both in the report on the impact of investments on the environment and in the proceedings on environmental impact assessment conducted by RDEP and GDEP. The impact of investments on tangible goods, particularly on the value of real estate, was discussed in the report in Part IV, Chapter 15 (Analysis of possible social conflicts), where different options were compared, including impact on tangible goods, redemption and

compensation for residents and property owners located on the investment route in each of the variants. This analysis showed that the option 4 preferred by the Investor is the most advantageous one. The RDEP (pp. 37, 38 and 46 of the Decision) referred to the impact of investments on tangible goods, indicating that the impact of investments on tangible goods will close within the limits of the technology strip. It was also indicated that the valuation of compensation for real estate and transmission easement will be made by an authorized property appraiser at a different stage, not falling within the scope of the procedure related to issuing a decision on the environmental conditions of investment implementation. Referring to the problem of the decline in the value of real estate, this issue was already clarified by the Supreme Administrative Court in its judgment of 4 January 2011, II OSK 2319/10, indicating that the issue of loss of economic value of land goes beyond the scope of the procedure of environmental impact, and preparation of appraisal reports requires the opinion of a property expert in accordance with the provisions on real estate management. Consequently, it is also not justified to plead infringement of art. 141 § 4 in connection with art. 3 § 1 of LACP by omitting this issue in the justification of the Court of first instance. It should also be noted that neither the authorities ruling in the case nor the first instance court had an obligation to define the term "tangible goods". This term, used in the content of many legal norms, does not have a legal definition. Also, in colloquial language, based on economic or sociological sciences, it is understood differently. It is intuitively assumed that tangible goods are real estate (land and buildings) and movable property. In the case examined, as mentioned above, the authority referred to the issue of the impact of the planned investment on tangible goods such as real estate located in the planned investment area. If any of the parties to the proceedings believed that the investment would affect other of its material assets, it should indicate what specific goods it is.

In conclusion, as none of the cassation appeals contain any objections that could undermine the accuracy of the factual and legal findings adopted by the Court of first instance as the basis for adjudication, the Supreme Administrative Court, pursuant to art. 184 of LACP, ruled as in the operative part.