

Bakalarzewo 02-07-2015r.

Mirosław Przyborowski
The 'Healthy Municipality' Association
Kolonie 2
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PRE/ACCC/C/2015/126

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

Dear Ms Marshall,

1. Regarding the conversation during the session of Compliance Committee for the Aarhus Convention, we consider essential for understanding the issue to provide the domestic legal conditions which arise from the judgments of the Administrative Court of the highest national level in Poland and prove that the ratified Aarhus Convention is not treated in Poland as an international agreement.

Hence, in our opinion, it cannot be expected that the judgment of the Supreme Administrative Court concerning the environmental decision for the OHL 2x400kV in this case will take into account the rights of local communities that the provisions of the Aarhus Convention entail.

It can be supported with the following judgement:

The Judgment of the Supreme Administrative Court of 2012-01-19, II OSK 615/11

"Drawn up on 25 June 1998. Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (Journal of Laws of 2003. No. 78, pos. 706), ratified by the Act of 21 June 2001. (Journal of Laws No. 89, item. 970), there is an international agreement. This means that its provisions can not be directly used without making any changes in the legal system of the state by which this Convention had been signed and ratified. The provisions of the Convention do not entail any powers on their own. "

to which also legal environment in Poland has opposed:

Glosa to the judgment of the Supreme Administrative Court of 19 January 2012., Ref. Act II OSK 615/11

"(9) [Aarhus Convention] The position of the Supreme Administrative Court expressed in its judgment of 19 January 2012 does not deserve approval, both from the point of view of the constitutional principles of the Polish legal system and also regarding the essence of the case related to the environmental decision and public participation in decision-making. It is surprising that the Supreme Administrative Court disregarded the fact that with the Act of 21 June 2001. on ratification of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Dz. U. No. 89 item . 970) Poland has ratified the Aarhus Convention as well. The President of the Republic of Poland ratified the said Convention on 31 December 2001. The instrument of ratification was assigned with the General Secretary of the United Nations on 15 February 2002. Pursuant to Art. 20 paragraph. 3 of the Convention it entered into force for the Republic of Poland on 16 May 2002. Due to the ratification pursuant to art. 89 paragraph. 1 of the Constitution of the Republic of Poland, the Convention has the status of an international agreement binding Poland and its authorities, including the courts. On the basis of art. 91 paragraph. 1 and 2 of the Constitution it can be applied directly, with priority over domestic law if its provisions are incompatible with national law. Hence the question of the application in a particular case heard by the Court of norms of international law cannot be regarded as a legally irrelevant issue, especially when it relates to this particular Convention. "

The privileges of Polish citizens guaranteed at the international level, even with acts of national law are ignored, disregarded and violated by the practice of defective authorities, especially in relation to informing the affected parties and individuals about the initiation of proceedings in the environmental decision and the announcement of such a decision. We feel that these decisions are taken quietly and in secret, just to avoid social protests related to the implementation of projects that are obviously harmful to humans, animals and the environment.

We believe that the judgment of the Supreme Administrative Court of 19 January 2012. does not correspond to operating law and reflects the commonness of the malfunction of the public administration and administrative courts at all levels in Poland, which results in decisions and judgements that are not only inconsistent with the provisions of the Aarhus Convention, but also contradictory to the interests of citizens to participate actively in administrative proceedings related to the environment.

2. Explaining the request to comment on the use of all domestic remedies we inform that the Healthy Municipality Association has exhausted all available remedies. Indicated by the Polish Ministry of the Environment pending consideration of the matter in the Supreme Administrative Court concerns an emergency measure - cassation appeal. The legal status of the Healthy Municipality Association in national legislation prevents direct appeal of Association as a legal entity in administrative court proceedings.

The Association does not have the possibility of a direct link between the statutory objectives of the organization with the legitimate interest of people who the Association desired to

support in the framework of administrative and judicial proceedings. Also, the financial situation of the members of the Healthy Municipality Association did not allow to cover the high cost of legal assistance and legal fees related to the cassation appeal to the Supreme Administrative Court. For this reason, other ecological organizations with the appropriate legal status and finances present the cases and appeal to the administrative courts on behalf of the Association.

3. We would like to point out that the environmental procedures, planning, judicial and decision-making are in Polish national law so complicated that few lawyers are able to effectively assist in this type of proceedings, since it requires a combination of knowledge in the field of construction law, land surveying, land development, environmental protection, geology, investment process.

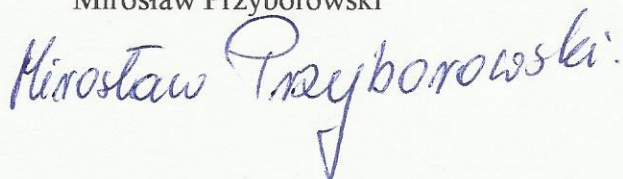
It is therefore difficult to expect from rural communities gathered in the Association that could easily participate in such complicated, time-consuming and costly proceedings. Especially that the Polish state has not provided any legal assistance, while information to local communities were often inaccessible or incomprehensible.

4. We kindly request for explanations submitted by the Polish Government to be made available for Association in Polish language, as the translations of documents are very expensive.

In conclusion, we strongly hope for a quick and efficient consideration of our complaint, which may contribute to the Polish authorities fully respecting the Aarhus Convention, in relation to a wide range of administrative proceedings regarding the implementation of various investments negatively affecting the environment and local communities.

Yours sincerely,

Mirosław Przyborowski



Załącznik:

1. Głos do wyroku Naczelnego Sądu Administracyjnego z dnia 19 stycznia 2012 r., sygn. akt II OSK 615/11