

Ukraine: Znesinnia Regional Landscape Park Versus Electric Power Supplier

Synopsis

This case study was chosen because it shows a good example of how the parties of the conflict did not take any administrative or court measures to resolve the problem but instead they found an alternative way to resolve the disagreement. The high level of interest in the case by the public proved to be an important motivation for the parties to find a satisfactory compromise.

Background of the conflict

The conflict originated when on November 4, 2002 the Director of the Znesinnia Regional Landscape Park, Oles Zavadovych received the letter from the local power supplying company, Lvivoblenergo JSC, requesting a permit to clear a corridor under a 110-kilovolt High Voltage Power Line (HVPL-110kV) situated in the park in order to prevent a serious accident involving visitors to the park.

On November 11-12, 2002 representatives of the park and Lvivoblenergo marked the trees to be cut: a total of 374 trees covering 103.42 square metres.

The administration of the park refused to approve the cutting of such a large number of trees within the park, particularly in the core protection area. In its objection to the tree-cutting, the administration argued that such a clearing would cause considerable damage to the park, which has recreational and nature protection purposes, and also may encourage erosion, as many of the trees are situated on steep slopes. The cutting would also prevent the use of certain areas of the park in accordance with its recreational and nature protection purposes, and would be a violation of Art. 7 of the Law on Nature Protection Fund of Ukraine, which prohibits such activity.

At the same time the paragraph 8.61 of the State Sanitary Rules of Urban Planning, approved by the Order of the Ministry of Health Protection of Ukraine on June 19, 1996 (No. 173) requires that HVPLs with a tension of 35-110 kV and higher shall only be placed outside residential territories or be replaced with underground cable lines. The park is an element of residential territory in accordance with the paragraph 3.4 of these Sanitary Rules. Referring to this requirement, the park also argued that the HVPL shall be removed from the park territory or replaced with underground cable lines.

The situation was, however, complicated by the fact that the HVPL had been erected before the park was established.

Lvivoblenergo explained that the cutting of trees under the HVPL is a forced measure and is only carried out to prevent accidental power failures and accidents. Moreover, the

cutting needed to be carried as soon as possible, as the state of the HVPL in the park is critical and requires urgent clearing (letter of January 14, 2003). Furthermore, Lvivoblenergo was obliged to cut the trees that endangered the HVPL by February 20, 2003 by the Order of the Territorial Administration of the State Committee on Labour Protection Supervision of January 21, 2003. Otherwise the Administration would prohibit the exploitation of the HVPL.

Lvivoblenergo received the permit for the cutting of all 374 trees from the State Administration on Natural Resources in Lviv Oblast of December 28, 2002 (No. 04-05-6619). However the Lviv City Council, whose approval for the cutting of trees in such case is needed, prohibited the cutting. The session of the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development was authorised to investigate the situation and advise the Council session. According to the session record of December 18, 2002 (No. 21), it decided that tree-cutting under the HVPL-110 shall not be allowed and allowed only the formation of the crowns of trees in order to enable the “temporary” functioning of the line.

During the conflict resolution process, the parties did not take any administrative or court measures to resolve the problem. However, the park was initially considering addressing the court to request the removal of the HVPL from the park. For its part, Lvivoblenergo could have appealed the refusal of the park to provide the permit (either through the court of in administrative proceedings).

The parties, however, found an alternative way to resolve the conflict.

Parties and stakeholders of the process

Main parties

The main parties of the conflict are Lvivoblenergo JSC and the Znesinnia Regional Landscape Park.

Znesinnia is a Nature Preservation Fund object of local importance that was established in accordance with the decision of the Lviv Oblast (district) Council of December 2, 1993 (No. 327) and serves recreational and nature preservation purposes.

The legal status of the park, as well as requirements and restrictions regarding the use of its lands and natural resources are set in the Law on Nature Protection Fund of Ukraine of June 16, 1992 (No. 2456-XII). Any activity that negatively impacts or may impact natural or historical and cultural complexes and units on its territory or prevent them from being used in accordance with their purpose is prohibited (Art. 7).

Its main interest in the conflict was to prevent the unnecessary cutting of trees and removal of the HVPL from the territory of the park or their replacement with underground cable lines.

Lvivoblenergo is an open joint stock company formerly known as the State Joint Stock Energy Supplying Company. It is a local electric power supplier for Lviv oblast (district). It acts within the legal framework of the requirements of safe maintenance of high voltage power lines, in accordance with the Rules of Electric Supply Networks Protection,

approved by the Cabinet of Ministers of Ukraine of March 4, 1997 (No. 209). The rules stipulate that the distance between the crown of the trees and an HVPL-110kV shall be no less than 4 metres, and no trees, except for fruit trees not higher than 4 metres, are allowed to be planted under an HVPL.

Lvivoblenergo's position in the conflict was based on the requirements of safe exploitation of an HVPL and its main interest was compliance with these rules. It also wanted to fulfil the requirements of the Order of Territorial Administration of the State Committee on Labour Protection Supervision, and therefore cut the trees in the corridor under the HVPL as soon as possible.

Stakeholders — Local authorities

The State Administration on Natural Resources in Lviv Oblast

At the beginning of the conflict, the State Administration on Natural Resources in Lviv Oblast was on the side of Lvivoblenergo and approved the cutting of the initial amount of trees (374). After the negotiation process, however, and under pressure from public opinion and regular coverage of the events in the local press, it changed its mind and supported the proposal of the park administration to decrease the number of trees to be cut. In accordance with its order, the reallocation of trees was carried and only 115 trees were considered as accidentally hazardous and thus subject to cutting. The rest were subject only to crown shaping.

Lviv City Council Commission on Nature Management, Environment Protection and Urban Development (henceforth Lviv City Council Commission)

From the beginning of the conflict the Lviv City Council has been on the side of the park, i.e. against the cutting. The Lviv City Council Commission decided to forbid the cutting of trees under the HVPL-110 and allowed only the formation of the crowns of trees in order to enable the “temporary” functioning of the line.

Stakeholders — Non-governmental organisations

The Public Council at Lviv Oblast State Administration on Environment and Natural Resources (henceforth Public Council) is an advisory body for the state administration that consists of the representatives of the state administration, NGOs and mass media. This is not an NGO and is not the governmental structure, as it combines representatives of both NGOs and government. It is a permanent “public hearing” structure, and is an advisory body. Its decision is not obligatory to the Administration however the Administration usually consider them as they represent the broad public opinion.

Ecopravo-Lviv Charitable Foundation is an environmental law organisation that provided free legal support (consultations, help in preparing letters and documents) to the administration of the park and all other parties defending the interests of nature protection. It also carried out its own actions in requesting relevant information from state authorities.

It also helped to collect information on replacing HVPL with cable lines and requested information on practices and economic and ecological benefits of this type of replacement in Ukraine. It also requested the relevant documents from the Ministry of Energy and

Fuel of Ukraine and the Dnipropetrovsk City Council, which carried out the replacement, and also the decisions on development of the General Plan of Lviv City by the Lviv City Council.

Ecopravo-Lviv participated in the Meeting of the Public Council as a member (the Ecopravo-Lviv representative was a secretary of the Public Council at that moment).

Znesinnia Renaissance, Lviv NGO was created with the aim of protecting the park. It supported the position of the park and applied to the mayor of Lviv, the head of the Oblast State Administration, and the head of the Lviv Administration on Architecture and City Building with a request to support the proposal of the park and carry out the HVPL replacement with cable lines.

Lviv city inhabitants

Thirty-six people signed the letter to the mayor of Lviv supporting the park and requesting the halting of the tree cutting and the replacement of the HVPL.

Conflict resolution process

Why was this tool used?

The decision to negotiate a compromise, rather than turning to the courts or administrative proceedings, was primarily motivated by the strong public interest in the case and the heavy coverage by mass media. Any unilateral decision for one side would have had repercussions, as both sides had legal grounds to protect their interests: the park was acting in the framework of the legislation on natural reserves, which prohibits any activity that may cause damage to the park, while Lvivoblenergo was acting within the framework of the rules on safe exploitation of HVPL, which required the prevention of any crossing of a line by trees branches. For their part, the national authorities, on whom the final decision rested, were interested in finding a compromise that appeased a public that was paying close attention to the case. It was therefore critical to involve the public in the process through the Public Council, as an important stakeholder, in order to find a solution acceptable for all sides.

Description of the process

The conflict resolution process did not have any formal mediator. The process may be described as negotiations that were carried out in two rounds (*see chart*):

- 1) the non-facilitated negotiations and consultations between the parties of the conflict and the state authorities involved, which mainly took the form of correspondence and special meetings; and
- 2) open discussion involving all stakeholders, in particular the involvement of the public, in the form of the Meeting of the Public Council facilitated by the Head of the Council.

First stage of conflict resolution (November 2002 – January 2003)

The first stage took the form of **negotiations** and **consultations (discussions)** between the park, Lvivoblenergo and the state authorities authorised to give permits for tree cutting (Lviv City Council, Lviv Oblast State Administration on Natural Resources) and in forming public opinion through local mass media. During this round no formal mediator or facilitator was involved, and the two sides of the conflict, the park and Lvivoblenergo, presented their cases to state and local authorities.

The first compromise was suggested by the park administration. Understanding the necessity to prevent accidents, the park proposed that only those trees should be cut that directly endangered the visitors of the park and that prevent the safe exploitation of the HVEL. They suggested trimming the tops of the rest of the trees. They also proposed to settle this issue at the Meeting of the Public Council at the Lviv Oblast State Administration on Environment and Natural Resources with the participation of all interested parties and other stakeholders in a letter dated December 9, 2002 (No. 1660/175)¹.

The proposal of the park was supported by the NGO Znesinnia Renaissance and by Lviv residents, who wrote to the Lviv mayor and the head of Oblast State Administration.

The representatives of Lvivolenergo did not agree with this proposal, considering it a way to delay the approval of the tree cutting and managed to receive an approval for cutting all 374 trees from the State Administration on Natural Resources in Lviv Oblast on December 28, 2002 (No. 04-05-6619).

The first negotiations took place at the Lviv City Council during the session of the Lviv City Council Commission. According to the session record of December 18, 2002 (No. 21), it decided that the tree cutting under HVPL-110 shall not be aloud and allowed only the trimming of tree crowns in order to enable the “temporary” functioning of the line. However, the tree cutting in this situation required a permit from the Lviv City Council.

The Meeting on Clearing of the Corridor Under the HVPL-110 from the Trees took place in the park. According to the record of December 25, 2002, Lvivoblenergo was recommended to acquire the land plots under the HVPL for a paid restricted use (easement) from the Lviv mayor and only then to raise the issues of a permit for clearing the corridor taking into account the decision of the Lviv City Council.

During these meetings only the parties (the park and Lvivoblenergo) and the members of the commissions mentioned above (deputies of the Lviv City Council and specialists) were involved. This stage of negotiation did not engage the public or NGO representatives and no facilitators were involved. The first meetings took the form of a discussion and took place at the Lviv City Council, and the second was a trip to the park to view the actual site. Public opinion was not formally taken into account. However, due to coverage by the local mass media, the members of the meeting took into account that the conflict had sparked the interest of the public and may result in protests.

¹ The letter was addressed to the deputy mayor of Lviv on urban and land use planning, the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development, the Lviv City Council Commission on Land Use, Construction and Architecture, the Lviv Oblast State Administration on Environment and Natural Resources, the Public Council at Lviv Oblast State Administration on Environment and Natural Resources, Ecopravo-Lviv and to the Lvivoblenergo.

The high interest of the local public in this case was, in fact, one of the most important reasons why the parties and the involved state/local authorities worked amicably to find a compromise.

However, this round did not bring the conflict to a close because the resolution of the problem required the involvement of the public as an important stakeholder. Therefore, in order to resolve the conflict in favour of the nature protection the park needed to gain the support of the public and produce strong evidence of this support. It was also a reason for the second round of negotiations, mainly aimed at involving NGOs and other representatives of the public to find out and record their opinions with the help of the Meeting of the Public Council.

Second stage of conflict resolution (January 10, 2003)

The second round of conflict resolution took place in form of direct negotiations during the meeting of the Public Council and involved the wide public.

An important stakeholder of this conflict was the Lviv public. In order to involve it in the conflict settlement, to receive its support, and, most important, to legally record this support the special meeting of the Public Council was scheduled for January 10, 2003. The meeting was facilitated by the Head of the Public Council (elected by the members of the Public Council, an NGO representative), who reported on the proposal of the park and chaired the meeting. The Head of the Public Council had no special training in mediation or facilitation. However, his facilitation techniques were acquired from his previous experience of chairing the previous meetings of the Public Council.

Output of the process

The meeting, with participation by representatives of all concerned parties, the general public and mass media decided:

- upon the necessity to replace the procedure of tree cutting with the treetop shaping;
- upon the necessity to remove the HVEL from the park in the future;
- to apply to the mayor of Lviv with a proposal to create a special working group to develop a way to replace the HVEL with cable lines and to remove all HVEL equipment from the park territory.

The decision of the Meeting and the whole discussion were formalised in the form of the Public Council Meeting record, taken and signed by the secretary of the Public Council. This record served as a formulation of public opinion and had a strong power over the parties as it was a document that the authorities involved in the conflict would take into consideration.

After the negotiation process and under the pressure of public opinion, as the whole conflict was accompanied with resonant coverage in the local press, the State Administration on Natural Resources in Lviv Oblast supported the proposal of the administration of the park to decrease the amount of trees to be cut. In accordance with this proposal the State Administration on Natural Resources in Lviv Oblast ordered the reallocation of trees, dividing them into two categories: hazardous and therefore subject to cutting, and subject to crown formation.

Table 1 — timetable of the process

Conflict resolution stage	Nov 2002	Dec 2002	Jan 2003	Feb 2003	Apr 2003	2004	Nov 2005
Origin of the conflict:							
Lvivoblenergo requests a permit from the park to cut 374 trees under the HVPL	4.11.02						
Negotiations and consultations between conflict parties and authorities							
Letter of the park to Lvioblenergo and relevant state authorities with a proposal to summon a meeting of the Public Council to discuss a solution if the case		9.12.02					
The session of the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development decide not to allow the trees cutting, butonly crown trimming		18.12.02					
The Meeting on the Clearing of the Corridor Under the HVPL-110 from the Trees in the park decides that Lvivoblenergo shall first acquire the land plots under the HVPL for a paid restricted use Recommended Lvioblenergo to acquire the land plots under the HVPL for a paid restricted use (easement) from Lviv mayor, before requiring the permit for tree cutting		25.12.02					
The State Administration on Natural Resources in Lviv Oblast issues a permit for cutting 374 trees		28.12.02					
Open discussion							
The Meeting of the Public Council decides on the need to replace the HVPL with cable lines			10.01.03				
Implementation of decisions							
Reallocation of the trees, only 115 allocated for cutting			24.01.03				
Lviv City Council Engineering Administration issues permit for cutting 115 trees				19.02.03			

The Public Council requests Lviv mayor to replace the HVPL with cable lines				3.02.03			
The developer of the General Plan of Lviv City informed Public Council that its decision is taken into consideration					7.05.03		
Development the General Plan of Lviv City							
Approval of the General Plan by Lviv City Council							

Related actions and campaigns

The conflict resolution process generated considerable interest from Lviv's public and mass media. During the process, local newspapers routinely covered the events, commenting on the issues and interviewing the parties involved.

The process was conducted under the legal guidance to the side representing the nature protection interests by Ecopravo-Lviv.

Outcome of the case

The decisions of the Public Council at the Lviv Oblast State Administration on Environment and Natural Resources were supported by the Deputy Mayor of Lviv on Urban and Land Use Planning, Permanent Commission on the Use of Natural Resources, Environment Protection and Accomplishment. The decision took the form of an oral agreement to support the solution made during the meeting about the further procedures (on decreasing the number of the trees to be cut and replacement of the HVPL) and provide the approvals needed for the implementation of this decision.

The reallocation of the trees took place on January 24, 2003 in the presence of representatives of the park, Lvivoblenergo and the State Administration on Natural Resources in Lviv Oblast. The result was the reallocation of only 115 trees (instead of 374) designated for cutting. It led to the issuance of a permit for cutting on February 19, 2003 (No. 3) by the Lviv City Council Engineering Administration.

On February 3, 2003 the Public Council asked the Mayor of Lviv to consider the decision of the Public Council expressing the necessity to replace the HVPL with underground cable lines and to remove it from the residential area of Lviv when developing the General Plan of Lviv City. It also called for the involvement of representatives of the Public Council in the special working group on developing a proposal for that replacement.

In reply to this request, the Lvivmisto project, a state enterprise of the Urban Planning Institute, informed the Public Council by letter on May 7, 2003 (No.279/12-1) that it has taken into consideration the decision of the Public Council on the replacement of the HVPL and invited it to participate in the development of the Lviv City Development Concept.

The General Plan of Lviv City will be approved by the Lviv City Council in November 2005.

The compromise found was satisfactory to all parties. The park, despite the loss of some trees, realised that it was necessary and was satisfied with the solution of the problem in a more sustainable way, as it led to a decision on the future removal of the HVPL from the park.

Lvivoblenergo was able to remove the danger to the HVPL and fulfil the HVPL safety requirements.

The state/local authorities, the Lviv City Council and the public managed finally to solve in this process the long-lasting problem of the HVPL being in the park, as well as the problem of HVPLs in Lviv generally, as the resolution of the conflict led to the development of proposals to replace all HVPLs in Lviv in the new General Plan of Lviv City.

Conclusions

The problem of the HVPL in the park is a common problem for all inhabitants of Lviv , and not just of the park. Therefore, the negotiations in this case were fruitful and satisfactory to all participants. The negotiation process offered a possibility to solve not only the urgent problem of saving the trees and preventing accidents, but also to tackle this problem in a more sustainable way, as well as to settle the more general issue of removing the HVPL from the territory of the park.

The main obstacle in this case was the strong opposition of Lvivoblenergo to reaching a compromise. On the other hand, the desire of the public authorities to find a better and more satisfactory solution that made it possible to reach the decision.

In similar situations, when the state and local authorities on which the solution of the issue depend are ready to negotiate and choose a means of conflict resolution that seeks a compromise, it is more effective to negotiate than to settle the issues in court or other similar ways. In this case, clear mediation procedures may also be of help in effectively and quickly finding a compromise.

Comments of participants in process

Director of the park:

“We would not be able to avoid the clearing of the corridor, so we decided to approach the oblenergo with our proposals: in particular, not to cut the trees completely but only to shape their crown, not to touch the trees on steep slopes and also those that do not reach the Line. And in general a deep thinking shall be made on how to prevent the regular trees cutting, as this is nonsense.”

Head of Lviv NGO Znesinnia Renaissance:

“It is now, in hard environmental situation when began the action of Lvivoblenergo on clearing the territory for the overhead power line. A lot of trees will be destroyed, that would cause a worsening of environment. It will cause the increase of the illnesses of population... In this case it would be wise to listen to the proposal of the public and lay the underground electric power line.”

Head of the Lviv Highvoltage Region of Power Lives:

“We stress that the forced clearing of the corridors of the overhead power lines, in accordance with the Rules of Electric Supply Networks Protection, approved by the Cabinet of Ministers of Ukraine of 04.03.1997 #209, is carried out to prevent the

accidental cutoff of the Power Lines and de-energising the users. In this case these are the user of the Power Line 110 kV Lviv-3 – the maternity hospital, City and Oblast (district) Councils, 22 boiler-houses, Galytsky Region Department Of Internal Affairs, museums, theatres, hotels and other objects of the central part of the city. Apart from that, the clearing of the corridor is carried out also to prevent the accidents with population, that may happen in case of strike of the electric current during the crossing of the 110 kV power the trees. . . The terms of land use have nothing to do with the provision of safe exploitation of the Power Line. In case of delaying or putting off the permit issuing for the clearing of the line in a designated, according to the law, corridor that is showed in the Project of park “Znesinnia” Territory Arrangement, all the responsibility for possible negative consequences lays on the authorities and organizations, that do not permit the clearance of the corridor and cutting of the trees.”

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