

RECHTSANWÄLTE
SIMONFAY & SALBURG
WIEN – BUDAPEST - VILNIUS

Annex A

**SUMMARY OF THE COMMUNICATION TO THE AARHUS
CONVENTION – COMPLAINTS COMMITTEE**

The correspondent is an association of the citizens of the villages Kazokiskes in Lithuania, officially registered under the laws of the Republic of Lithuania.

Since the year 2002 official plans by the responsible authorities of Lithuania exist to establish a huge landfill in Kazokiskes. The intended landfill has a total capacity of 6,8 million tons of waste over a period of 20 years, this is a capacity of around 1000 tons per day.

The first plans and information to the public on this landfill were provided in the year 2002. At this time a so-called "detailed plan" was existing, which was presented to the public. This "detailed plan" just informed that a landfill will be built with a capacity of 250.000 tons a year and capacity of 6,8 million tons in total. The information at this time provided was extremely superficial as no information was given on the technical details of the landfill, especially no information on how to protect the ground water, no information on the expected emissions from the landfill and the effect on the surrounding nature and population.

Later on in the year 2005 even the Ministry of Health of the Republic of Lithuania established a work group, which came to the conclusion that the information provided in the year 2002 was not at all sufficient.

Further at this time and till now no information was provided on alternatives studied by the Lithuanian authorities in respect of the intended landfill.

Till now the Lithuanian authorities did not make available to the public any information on studies concluded, on other kinds of waste treatment, especially modern waste treatments like waste incinerators, proper systems of sorting and recycling and so on. According to the information given all the waste from the Vilnius region including the capital of Lithuania, therefore of approximately 1/3 of the total population of Lithuania, will be simply dumped at Kazokiskes landfill without any waste treatment or sorting.

As mentioned above in the year 2002 the information given was very superficial and no clear plan on the intended landfill existed. Only in the year 2005 the technical project for the intended landfill, with all technical details was finalized and approved by Lithuanian authorities.

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By the end of 2005 the Lithuanian authorities tendered the construction works for establishing the landfill.

In the opinion of the correspondent the decision to approve the technical project (and by this determining the technical characteristics of the landfill) and the construction permission for the landfill, which was issued by the end of 2005 are decisions which are subject to the AARHUS convention and therefore public participation regarding the decision making process would have been necessary. Further the public concerned/the correspondent were entitled regarding these two decisions to have access to justice, to a review procedure in front of court on substance and procedure.

These decisions were not made available to the correspondent, no public participation was provided in respect of these decisions and no access to justice.

The correspondent also contacted the European Union as the intended landfill falls in the scope of directive 96/61/EC as amended by directive 2003/35/EC. Directive 2003/35/EC is intended to implement the AARHUS convention on the level of the European Union.

This EU legislation requires public participation and access to justice and further more that regarding the landfill the best available technology has to be applied in order to avoid environmental pollution.

The correspondents are highly convinced that the intended landfill does not fulfil the requirement of best available technology, as there is no modern waste treatment at all.

The correspondents asked the Lithuanian authorities several times to initiate the procedure to issue a permission according to directive 96/61/EC (IPPC permission) including the foreseen public participation and access to justice. First the Lithuanian authorities stated that no such permission is needed, because all permissions were already given in the year 2002.

The correspondents could convince the Lithuanian authorities that an IPPC permission is necessary according to EU legislation, but the Lithuanian authorities stated, that such a permission will be only issued after the construction of the landfill is finalized, shortly before the landfill starts operation.

On this issue the correspondents complaint to the European Commission stating that in the opinion of the correspondents it is not in line with EU legislation, that the procedure which foresees public participation and access to justice is only started after an installation (in this case a landfill) is constructed, because effective public participation as foreseen by directive 2003/35/EC requires that the procedure granting public participation and access to justice is carried out before construction starts.

The European Commission referring to directive 96/61/EC answered to the correspondents that according to the above mentioned EU directive the member states have to ensure that no installation is **“operating”** without a permission and that therefore for the construction of a landfill no such permission is required.

Therefore also the European Commission confirmed that the correspondents are not entitled to a procedure which is granting public participation and access to justice before the construction is finalized.

The correspondents are highly convinced that this is not in line with the AARHUS convention, especially as the AARHUS convention requires in Art. 6 chapter 4 **that each party shall provide for early public participation, when all options are open and effective public participation can take place.**

In the opinion of the correspondents a public participation after the construction is finalized, especially taken into account that the landfill costs around EUR 20 million is not at all fulfilling this criteria, because after construction no options are available anymore.

In this respect it has to be noted that the correspondents are highly convinced that not just the Republic of Lithuania is not in compliance with the AARHUS convention, but also the European Union. But the correspondents are aware that at the time being a correspondence to the compliance committee about a non-compliance of the European Union is not possible.

Further as mentioned in the year 2002 only superficial information was available for the public, the technical project, the final details of landfill are till now not available to the correspondents/the public concerned. This constitutes a violation of the AARHUS convention as the necessary information is not available (Art. 6.).

Further the Lithuanian authorities approved the technical project which is a decision in the sense of Art. 6 of the AARHUS convention and the Lithuanian authorities issued a construction permission for the landfill, which is also a decision in the sense of Art. 6 of the AARHUS convention. Against these two decisions no access to justice (access to a court procedure to challenge decisions on substance and procedure) was available for the public/the correspondents. In this respect the Republic of Lithuania is violating Art. 9 of the AARHUS convention.

Vienna, on February 6th, 2006

Ulrich Salburg