



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/2008/5/Add.6
4 April 2008

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE CONVENTION ON
ACCESS TO INFORMATION, PUBLIC PARTICIPATION
IN DECISION-MAKING AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS

Third meeting

Riga, 11-13 June 2008

Item 6 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention:

Compliance mechanism

REPORT BY THE COMPLIANCE COMMITTEE*

Addendum

**COMPLIANCE BY LITHUANIA WITH ITS OBLIGATIONS
UNDER THE CONVENTION**

This document was prepared by the Compliance Committee in accordance with its mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties. It contains findings and recommendations with regard to communication ACCC/C/2006/16 by Association Kazokiskes Community (Lithuania) concerning decision-making on the establishment of a landfill in Kazokiskes, as adopted by the Compliance Committee on 7 March 2008.

* This document was submitted on the above date to allow due time for consultations with the parties concerned following the nineteenth meeting of the Compliance Committee (5-7 March 2008).

Introduction

1. On 13 March 2006, Association Kazokiskes Community (Lithuania), represented by Mr. Ulrich Salburg and Ms. Ramune Duleviciene, hereinafter “the communicant”, submitted a communication to the Compliance Committee alleging non-compliance by the Republic of Lithuania with its obligations under article 6 and article 9, paragraph 2, of the Convention.
2. The communication concerns a landfill in the village of Kazokiskes in the municipality of Elektrenai Vilnius. The communicant alleges that the Lithuanian authorities failed to comply with provisions of article 6 of the Convention with respect to decision-making on the establishment of the landfill. The communicant further alleges that it had no opportunity to challenge the decision on the establishment of the landfill, in particular due to the fact that it had not received the relevant decisions.
3. The communication was supplemented with a number of supporting documents, including English translations.
4. In the communication, the communicant also informed the Committee about the involvement of the European Community (EC) in the project and about its intention to submit a separate communication claiming non-compliance by the EC through failure to ensure consistency of its relevant legislation with the Convention and through decision-making regarding co-financing the landfill. Such a communication was indeed submitted on 12 June 2006 (ACCC/C/2006/17).
5. The Committee at its eleventh meeting (31 March 2006), determined on a preliminary basis that communication ACCC/C/2006/16 was admissible.
6. The Committee requested the communicant by letter dated 13 April 2006 to provide more detailed information with regard to Association Kazokiskes Community and in particular its statutory objectives. It also requested more information with regard to appeal procedures initiated by the communicant, including whether these had been initiated on behalf of the Association or on behalf of its individual members.
7. Pursuant to paragraph 22 of the annex to decision I/7, the communication was forwarded to the Party concerned on 13 April 2006.
8. The communicant submitted the requested information on 29 May 2006, without however indicating whether the appeal procedures were initiated on behalf of the Association or on behalf of its individual members.
9. A response was received from the Party concerned on 2 October 2006, disputing the claims made in the communication and providing an overview of the applicable national legal framework. The Party concerned also:

(a) Provided information about court decisions by the Administrative Court of Vilnius County granting standing to the communicant and initiating court proceedings regarding the relevant decisions on the landfill;

(b) Cited the opinions of some nationwide environmental non-governmental organizations (NGOs) (including Bank-Watch) which were in favour of placing a regional landfill in Kazokiskes.

10. On 6 and 29 May 2007, the communicant provided further information in response to questions from the Committee concerning the implications for the communication of certain procedures in the Administrative Court of Vilnius County. The information provided included partial translation of the relevant court decision. The final decisions had not been in favour of the claimant, and the communicant maintained that its allegations concerning non-compliance with article 9, paragraph 2, of the Convention remained relevant. A separate translation of the court decision was provided by the Party concerned.

11. At its sixteenth meeting (13–15 June 2007), the Committee discussed the communication with the participation of representatives of both the Party concerned and the communicant, both of whom answered questions, clarified issues and presented new information. The communicant also provided a statement in written form, whereby its allegations were clarified and extended to cover non-compliance with article 7 of the Convention. The Party concerned provided information about the decision-making processes in force in Lithuania, including copies of the Lithuanian Environmental Impact Assessment (EIA) Manual.

12. The Committee confirmed that the communication was admissible. However, it considered that while many issues had been clarified during the discussions at its sixteenth meeting, several outstanding issues remained, inter alia, related to the relevant provisions of Lithuanian legislation, which required further clarification.

13. The Committee asked the representatives of the Party concerned to provide to it by 15 July 2007 the required information, including translations of the relevant legislative provisions, information about the procedure, including dates, applied to the decision-making on the regional waste management plan, and information on the validity of the EIA decision of the Kazokiskes landfill in relation to the requirements for the application for the Integrated Pollution Prevention and Control (IPPC) permit.

14. The Party concerned provided the information requested on the regional waste management plan and the IPPC permit in correspondence received on 17 July 2007, followed on 10 September 2007 by the translations of the relevant pieces of legislation, including regulations on public participation in the territorial planning (Planning regulation) and on public participation in the EIA process (Order on public participation in EIA), and Amendment of EIA law.

15. On 21 September 2007, the communicant submitted to the Committee a response to the additional information provided by the Party concerned as well as documents supporting its allegations concerning the date of the approval of the waste management plan.

Preparation and adoption of the findings and recommendations

16. In accordance with paragraph 34 of the annex to decision I/7, the Committee prepared draft findings and recommendations at its eighteenth meeting. These were forwarded for comment to the Party concerned and to the communicant on 12 February 2008 with an invitation to provide comments, if any, by 25 February 2008. Comments were received from the communicant on 26 February 2008. The Party concerned provided its comments on 27 February 2008. The Committee, having reviewed the comments, took them into account in finalizing these findings and recommendations.

I. SUMMARY OF THE FACTS, EVIDENCE AND ISSUES

A. NATIONAL LEGAL FRAMEWORK

17. The communication concerns a proposed landfill with a projected total capacity of 6.8 million tons of waste over a period of 20 years, which is meant to serve as a regional landfill serving the waste management needs of the Vilnius region. The landfill is located in the immediate proximity of the residential area where the communicants live (with some of the installations within 500 m of residential houses) in the village of Kazokiskes in the municipality of Elektrenai near Vilnius.

18. The location, which is an old gravel and sand quarry, is already being used as a municipal landfill. Since 1999, the site has been subject to various planning decisions with the aim of establishing a modern landfill there serving regional purposes.

19. The national legal framework for approving a landfill consists of several consecutive procedures, including:

- (a) A waste management plan;
- (b) A detailed plan;
- (c) An EIA decision;
- (d) Approval of the technical project and construction permit;
- (e) An IPPC permit.

Waste management plan

20. Establishment of a landfill is supposed to derive from the relevant waste management plan – in the case of the landfill in Kazokiskes, the Vilnius County Waste Management Plan.

21. The drafting and approval of the waste management plan was undertaken in accordance with provisions of the national legislative acts that were in effect at the time, i.e. the Waste Management Law of the Republic of Lithuania and the requirements of the Waste Management Regulations approved by the Order No. 217 of the Minister of Environment of 14 July 1999. According to the provisions of these legislative acts, regional waste management plans were to be approved by the county council. In addition, they were required to be endorsed by all eight municipal councils within the county.

22. The aforementioned municipalities took decisions regarding the endorsement of the Vilnius County Management Plan during the period from April to June 2002. The Vilnius County Waste Management Plan was approved by the Vilnius County Council on 31 May 2002.

Detailed plan

23. In Lithuania, the detailed plan assumes the role of the principal planning permission authorizing a project to be located in a particular site and setting out its basic parameters.

24. The detailed plan for the landfill in Kazokiskes was approved on 5 April 2002 by the Elektrenai Municipality Council.

25. The communicant alleges:

- (a) Insufficient notification about possibility to participate;
- (b) Insufficient notification about the approval of the plan and possibility to challenge it;
- (c) Misleading content of the notification;
- (d) Insufficient and “superficial” technical data being the basis for the plan approval (see para. 45 below).

26. The Party concerned maintains that:

- (a) The notification was sufficient and fully in compliance with the applicable rules:
 - (i) There was a notice in the local newspaper;
 - (ii) Additionally, 14 property owners living within the “sanitary zone” were informed by registered letters;
- (b) The information forming the basis for the approval of the plan was sufficient for this (early) stage of the procedure, where only the general characteristics of the project and its location were being approved;
- (c) The public did not demonstrate great interest (only five persons participated in the hearing).

Environmental Impact Assessment decision

27. The EIA decision was taken on 12 June 2002 by the Ministry of Environment.

28. The communicants allege inadequate notification and inadequate content of the EIA report.

29. The Party concerned maintains:

- (a) The public was notified and consulted in relation to both the EIA programme (scoping phase) and the EIA report itself;
- (b) The notification was sufficient and fully in compliance with the applicable rules;
- (c) The report included all requested information;
- (d) The public did not raise objections.

Technical project and construction permit

30. The technical project and construction permit were approved on 13 May 2005 by the regional authorities.

31. The communicant alleges that the public did not have any chance to participate in either procedure.

32. The Party concerned maintains that although the special rules under environmental legislation do not apply here, the public concerned did have possibilities to participate under the general rules of administrative procedure.

33. In the course of the review of the communication by the Committee, both parties concerned held the view that these decision-making procedures, taken in the context of Lithuanian legislation, would not constitute procedures regulated by article 6 of the Convention.

Integrated Pollution Prevention and Control permit

34. The IPPC permit is required for a regional landfill once it is constructed and Lithuanian law envisages that the public will have all possibilities to participate and challenge the decision.

35. The communicant alleges that after the actual construction of the landfill the above possibilities are not effective.

B. SUBSTANTIVE ISSUES

Informing the public (notification) under article 6, paragraph 2

36. The communicant alleges that information was not provided “early in an environmental-decision-making procedure”:

(a) In the detailed plan – the public was informed only eight days before the plan was “completed”, whereas the legal requirement is to provide 20 working days for the public to have access to the detailed plan before it is approved (see Lithuanian national implementation report of 2005, response to question 19);

(b) In the EIA decision - the public did not have a chance to participate in the scoping (designing the EIA programme) as envisaged in Lithuanian law.

37. The communicant alleges that the information provided in the notification was not “adequate” (“appropriate”), and in particular did not properly describe the “proposed activity” or the “nature of possible decisions”:

(a) In the detailed plan – the public was not informed that the project concerned a major new landfill to be established in their locality and from the information provided could have assumed that the project related to the restoration of the existing small local landfill;

(b) In the EIA decision – the public was informed that the EIA report concerned “development possibilities of waste management in the Vilnius region” and not a major landfill in their neighbourhood.

38. The communicant alleges that manner in which the information was provided was not “effective”: information about the possibilities to participate in the detailed plan and the EIA was announced in *Elektrenu Zinios*, which is a weekly official journal and not a popular daily local newspaper.

39. The Party concerned maintains in relation to the detailed plan that:

(a) The notification concerning the detailed plan was sufficient and fully in compliance with the applicable rules, because:

(i) There was a notice in the local newspaper,

(ii) Additionally, 14 property owners living within the “sanitary zone” had been informed by registered letters;

(b) The notification was sufficient for this (early) stage of the procedure where only the general characteristics of the project and its location were being approved.

40. The Party concerned maintains in relation to the EIA decision that:

(a) The public was notified and consulted in relation to both the EIA programme (scoping phase) and the EIA report itself;

(b) The notification was sufficient and fully in compliance with the applicable Lithuanian rules.

Reasonable time frames under article 6, paragraph 3

41. The communicant alleges that the 10 working days envisaged in the Lithuanian EIA law for getting acquainted with the documentation (including the EIA report) and preparing to participate is not reasonable.

42. The Party concerned maintains that the period of 10 working days is commonly approved by Lithuanian legislation and that until now no one has questioned such a period as being unreasonable.

Early public participation when all options are open – article 6, paragraph 4

43. The communicant alleges that:

(a) The possibility to participate was offered to the public only after certain options had already been decided upon (landfill or waste incinerator) and when only two possible locations were being discussed;

(b) Participation in the IPPC permitting process happens only after the construction is finalized, which in fact - for economic reasons – makes no alternative option available anymore.

44. The Party concerned maintains that:

(a) The decisions on the choice of landfill (as opposed to incineration or other options) and its two possible locations were taken at the stage of the Waste Management Plan;

(b) The IPPC law provides that the project may not start to operate if it fails to meet the Best Available Technique (BAT) requirement.

Applicants to be encouraged to enter into discussions with the public – article 6, paragraph 5

45. The communicant alleges that the applicant made no attempt to discuss the issue with the public and was not encouraged to do so by the authorities.

Information to be made available under article 6, paragraph 6

46. The communicant alleges that:

- (a) Insufficient data on technical design were submitted;
- (b) No alternatives as to the method of waste management were considered;
- (c) no detailed data on impact on human health were submitted.

47. The Party concerned maintains that:

- (a) The data on technical design were sufficient for the purpose of EIA. More detailed data will be provided at the stage of the IPPC permit where the public will have a chance to assess the technology in the light of the BAT requirement;
- (b) Two alternative locations were considered and Kazokiskes was selected as the less environmentally harmful option;
- (c) Sufficiently detailed data on impact were provided in the EIA report.

Information about the decision – article 6, paragraph 9

48. The communicant alleges that:

- (a) The decision on the EIA itself was never published but only the information about the decision was published fifteen days after its approval;
- (b) The information about the decision was published in a supplement of *State News*, which is an official publication not read by the public, instead of being published in a national or local newspaper;
- (c) A sufficient statement of reasons was not provided, in particular why the landfill was to be built.

49. The Party concerned maintains that:

- (a) The information about the decision was published according to applicable Lithuanian procedures;
- (b) The reasons were provided as required by applicable Lithuanian procedures, including the outcome of public participation showing public support for the landfill.

Public participation in the preparation of the waste management plans - article 7

50. The communicant alleges that:

- (a) Public participation opportunities were not provided during the preparation of the Vilnius County Waste Management Plan;
- (b) The Plan was finally approved on 31 May 2002, which was after the Convention took effect for Lithuania and therefore its approval without opportunities for public participation constitutes a breach of the Convention.[†]

51. The Party concerned:

- (a) Appears to consider the issue as subject to article 7 of the Convention;
- (b) Acknowledges that the legislation in force during preparation of the Plan did not require public participation;
- (c) Maintains, however, that “the key drafting procedures were carried out prior to [when the] Aarhus Convention took effect, thus the Aarhus Convention requirements should not apply to the aforementioned Plan”.

Access to justice

52. The communicant maintains that, due to inadequate notification about the taking of the decisions on the detailed plan and EIA, it did not have a chance to challenge the decisions within the period of time prescribed by Lithuanian law (one month). It brought this matter before the courts.

53. The courts refused to accept the claim due to lack of convincing evidence for being unable to submit a claim within the period prescribed. On appeal the court was ready to reinstate the time limit provided the communicant being able to prove the exact time when it finally obtained the information about the decisions, so that the court could ascertain whether the one month period was met. However, the communicant was not able to establish the exact time and was not able to pursue the matter.

II. CONSIDERATION AND EVALUATION BY THE COMPLIANCE COMMITTEE

A. Legal basis and scope of considerations by the Compliance Committee

54. The Republic of Lithuania deposited its instrument of ratification of the Convention on 28 January 2002. The Convention entered into force for Lithuania on 28 April 2002.

55. The landfill in question belongs to activities covered by annex I, paragraph 5, of the Convention. The full range of public participation procedures under article 6 of the Convention

[†] The communicant referred to the Plan in connection with article 7 of the Convention in its statement made in the course of the discussion on the communication at the Committee’s sixteenth meeting (13–15 June 2007), while referring to it in connection with article 6 of the Convention in its written submission of 21 September 2007.

applies to decisions whether to permit such activities. Furthermore, the Vilnius County Waste Management Plan belongs to plans “relating to the environment” to which article 7 of the Convention applies.

56. Noting that some of the activities described in the communication took place prior to the Convention’s entry into force for Lithuania, the Committee is focusing on the activities that took place after 28 April 2002. However, as pointed out by the Committee, in determining whether or not to consider certain domestic procedures initiated before the entry into force of the Convention for the Party concerned, it considers whether significant events of those processes had taken place since the entry into force (cf. ECE/MP.PP/C.1/2005/2/Add.2, para. 4). In this regard the Committee noted that the significant events of the EIA procedure relating to implementation of article 6, in the Committee’s understanding, came after the entry into force of the Convention for Lithuania, with notification of the public concerned taking place in May 2002 and the decision itself being made on 12 June 2002.

57. The communication refers to a number of consecutive decision-making procedures. In such cases, it is possible that more than one decision amounts to a permit decision under article 6 or a decision to adopt a plan under article 7 of the Convention. This must be determined on a contextual basis, taking into account the legal effects of each decision. Moreover, as stated by the Committee in previous findings, when it determines how to categorize the relevant decisions under the Convention, their labels in the domestic law of the Party concerned are not decisive (cf. the findings concerning Belgium, ECE/MP.PP/C.1/2006/4/Add.2, para. 29). In the present case, while the Vilnius County Waste Management Plan clearly constitutes a plan covered by article 7 of the Convention, and has been considered thus by the communicant as well as the Party concerned, the nature of the other decisions relating to the landfill is less clear.

58. As stated above, detailed plans in Lithuanian law have the function of the principal planning permission authorizing a project to be located in a particular site and setting the basic parameters of the project. This suggests that, despite the label in Lithuanian law and the fact that detailed plans are treated as plans under article 7 of the Convention in the Lithuanian national implementation report of 2005, the detailed plan for the Kazokiskes landfill generates such legal effects as to constitute a permit decision under article 6 rather than a decision to adopt a plan under article 7 of the Convention. Considering the function and legal effects of the EIA decision and the IPPC decision, these decisions too constitute permitting decisions under article 6 of the Convention. However, bearing in mind that the decision concerning the detailed plan was taken on 5 April, that is, prior to the Convention entry into force for Lithuania, the Committee has evaluated only the EIA and IPPC decisions for the Kazokiskes landfill in the light of article 6 of the Convention.

59. The communicant and the Party concerned both consider that the approval of the technical project and construction permit should not be treated as decisions subject to article 6. The Committee has decided not to address this issue in the present case. This approach is in line with the Committee’s understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. On the other hand, in these findings the Committee is addressing also some general features of the Lithuanian legal framework, despite the indication by the communicant in its letter of 21 September 2007, that the communication

was not aiming at the compliance of the Lithuanian legal framework in general, but only concerned its deficient application in the case of the landfill in question.

60. The Committee notes that the decision-making procedure concerning the landfill in question was appreciated by some nationwide Lithuanian environmental NGOs and cited as being a good example of carrying out public participation procedures.

61. The Committee further notes that following ratification of the Convention by Lithuania, the legal framework for territorial planning has changed in order to provide a clearer framework for public rights to participate and to initiate review procedures.

B. Admissibility and use of domestic remedies

62. As mentioned under paragraph 12 above, the Committee finds the communication to be admissible, notwithstanding the fact that the chain of the decision-making procedures aiming to permit the landfill was not completed at that time, and in particular the fact that the IPPC permit was still to be granted, with the possibility remaining to challenge it in court.

63. The communicant has attempted to make use of the domestic remedies available at the early stage. The Committee finds some merit in the argument of the communicant that deficiencies in applying public participation procedures effectively deprived it of its rights under article 9, paragraph 2, of the Convention, i.e. the possibility to challenge the decisions taken at the early stage of decision-making.

64. Moreover, as pointed out in paragraph 59, the communication involves also issues related to the compliance of the entire legal framework with the requirements of the Convention, an issue which can be addressed regardless of the outcome of the decision-making on the landfill.

C. Substantive issues

Informing the public (notification) under article 6, paragraph 2

65. Lithuanian legislation does not provide for a clear requirement, that the public be informed in a timely, adequate and effective manner.

66. It is not clear from the information provided to the Committee whether the public was properly notified about the possibility to participate in the “designing the EIA programme” (i.e. the scoping stage) as envisaged in the Lithuanian law. At the same time, it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.

67. The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities

and their possibilities to participate. Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies.

68. The Committee thus concludes that by not properly notifying the public about the nature of possible decisions, and by failing to inform the public in an effective manner, Lithuania has failed to comply with article 6, paragraph 2 of the Convention.

Reasonable time frames under article 6, paragraph 3

69. The requirement to provide “reasonable time frames” implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, *inter alia*, the nature, complexity and size of the proposed activity. A time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.

70. The time frame of only 10 working days, set out in the Lithuanian EIA Law, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill, does not meet the requirement of reasonable time frames in article 6, paragraph 3. This finding is not negated by the fact that the fixed period of 10 working days is commonly approved by Lithuanian legislation and that until now, according to the Party concerned, no one has questioned such period as being unreasonable.

Early public participation when all options are open – article 6, paragraph 4

71. The requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.

72. Lithuanian law envisages public participation in decision-making on plans and programmes. With this in mind and considering the structure of the consecutive decision-making and the legal effect of the different decisions in Lithuania, the fact that certain decisions took place when certain options were already decided upon (e.g. landfill or waste incinerator) and

when only two possible locations were discussed does not seem to exceed the above limits of discretion.

73. While the information available to the Committee is not sufficient to conclude whether indeed in this particular case the public had a chance to participate in the scoping (i.e. designing the EIA programme), the Committee welcomes the approach of the Lithuanian law which envisages public participation at the stage of scoping. This appears to provide for early public participation in EIA decision-making.

74. Bearing in mind the general considerations in paragraphs 73 to 75, a system whereby the IPPC permitting process starts after the construction is finalized, as is the case in Lithuania, need not of itself be in conflict with the requirements of Convention, though in certain circumstances it might be. Once an installation has been constructed, political and commercial pressures may effectively foreclose certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure. A key issue is whether the public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the “events on the ground” have effectively eliminated alternative options. If the only opportunity for the public to provide input to decision-making on technological choices, which is subject to the public participation requirements of article 6, is at a stage when there is no realistic possibility for certain technological choices to be accepted, then this would not be compatible with the Convention.

75. In the present case, the Committee is not convinced that those questions concerning technological choices which had effectively been ruled out by the de facto existence of the landfill installation (such as the major choice between landfill and incineration) did not fall within the scope of the earlier decisions in which there were opportunities for the public to participate. The deficiencies in the public participation opportunities identified elsewhere in these findings are not directly related to the fact that the IPPC phase starts after the construction has been completed. It may not be a politically realistic option for the authorities to permanently block the operation of the installation by indefinitely refusing to grant any operating permit might, as pointed out by the communicant. Yet it does not appear to be unrealistic that the authorities might reject a particular technological choice and thereby force the developer to submit a new application proposing a different technology.

76. A general conclusion from these considerations is that there is a need for clear and transparent sequencing of permitting decisions, so that it is clear to the public what is being decided and which options are under consideration at each stage.

Applicants to be encouraged to enter into discussions with the public – article 6, paragraph 5

77. The communicant’s allegations with respect to the lack of engagement on the part of the developer (para. 44) do not seem to be justified bearing in mind that according to Lithuanian law the developer is in fact responsible for organizing public participation, including for making available the relevant information and for collecting the comments.

78. However, the above reliance on the developer in providing for public participation in fact

raises doubts as to whether such an arrangement is fully in line with the Convention. Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6). Accordingly, reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention.

Information to be made available under article 6, paragraph 6

79. With regard to the communicants' allegations with respect to lack of certain information relevant to the decision-making (para. 45), the Committee does not consider itself in a position to analyse the accuracy of the data which form the basis for the decisions in question. The Convention, while requiring the main alternatives studied by the applicant to be made accessible, does not prescribe what alternatives should be studied. Thus, the role of the Committee is to find out if the data that were available for the authorities taking the decision were accessible to the public and not to check whether the data available were accurate.

Submission of comments - article 6, paragraph 7

80. Whereas the Convention requires in article 6, paragraph 7, that "public participation procedures shall allow the public to submit ... any comments, information, analyses or opinions", Lithuanian legislation limits the right to submit comments to the *public concerned*, and these comments are required to be "motivated proposals", i.e. containing reasoned argumentation. In this respect, Lithuanian law fails to guarantee the full scope of the rights envisaged by the Convention.

Information about the decision – article 6, paragraph 9

81. With regard to the allegation as to the failure to publicize the final decision (para. 47), the Committee wishes to underline that the Convention does not require the decision itself to be published. It only requires that the public be informed about the decision and has the right to have access to the decision together with the reasons and considerations on which it is based. The public shall be informed "promptly" and "in accordance with the appropriate procedures". The Convention does not specify here, as opposed to article 6, paragraph 2, any further requirements regarding informing the public about taking the decision thus leaving to the Parties some discretion in designing "the appropriate procedures" in their national legal frameworks. Similarly, the Convention does not set any precise requirements as to documenting "the reasons and considerations on which the decision is based" except for the requirement to provide evidence of taking due account of "the outcome of public participation" as required under article 6, paragraph 8.

82. Whether informing the public 15 days after the adoption of the decision can be considered to be prompt depends on the specific circumstances (e.g. the kind of the decision, the type and size of the activity in question) and the relevant provisions of the domestic legal system (e.g. the relevant appeal procedures and their timing). Without sufficient knowledge about the Lithuanian legal system and its "appropriate procedures", the Committee does not at this stage consider itself in a position to decide on whether or not notification about the decision in this particular

case was prompt. The Committee takes note however that the public was informed about the decision, as it is not disputed by the communicant, in a manner that was in compliance with the applicable Lithuanian procedures.

83. It is not the task of the Committee to assess whether the reasons and considerations on which the EIA decision concerning the landfill was based were accurate and in compliance with the applicable provisions of the Lithuanian law. The Committee takes note, however, that the statement of reasons for the above decision did refer, as it is not disputed by the communicant, to the outcome of public participation.

84. Bearing the above in mind the Committee is not able to conclude whether article 6, paragraph 9, of the Convention was implemented correctly. The Committee wishes to note however that whatever time period for informing the public about the decision is granted by domestic legislation, it should be “reasonable” and in particular bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2. Moreover, the manner in which the public is informed and the requirements for documenting the reasons and considerations on which the decision is based should be designed bearing in mind the relevant time frames and other requirements for initiating review procedures under article 9, paragraph 2, of the Convention.

Public participation in preparation of the waste management plans - article 7

85. Since the bulk of activities related to preparation of the waste management plans took place well before the Convention entered into force in relation to Lithuania, the Committee did not address the subject matter of the corresponding allegations. Nevertheless the Committee is of the opinion that pending the ratification process, the Party should strive to apply the Convention. In this regard, the Committee notes that at the first meeting of the Parties (Lucca, Italy, October 2002) Lithuania, like other Signatories, approved the declaration calling on all the Signatories to put in place the full set of implementing legislation as well as procedures and mechanisms for implementing the specific provisions of the Convention and, in the interim, to seek to apply the provisions of the Convention to the maximum extent possible (ECE/MP.PP/2/Add.1, para. 9)

86. The Committee, however, without having examined the issue in depth, is under the impression that although the current legislation seems to be in line with article 7, it relates only to plans and programmes that are subject to strategic environmental assessment (SEA) and that there is no evidence of the public participation requirements covering other plans and programmes relating to the environment.

Access to justice

87. The Committee notes the communicant’s claim that its right to initiate the review procedures in accordance with article 9, paragraph 2, was compromised by the manner and the timing of the notification of the decisions on the detailed plan and the EIA. However, the Committee also notes that the court was ready to reinstate the time limit for appeal from the time that the communicant first learned of the decisions and that the communicant did not pursue this possibility. The Committee therefore does not consider that there is enough evidence to reach the conclusion that there was a failure to implement article 9, paragraph 2, of the Convention.

III. CONCLUSIONS

88. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

89. The Committee finds that by failing to inform the public in an adequate, timely and effective manner about the possibility to participate in the decisions concerning the EIA decision (paras. 65–69), and by providing too short a time to inspect the documentation and to submit comments in relation to the above decisions regarding the landfill in question, Lithuania failed to comply with the requirements of article 6, paragraphs 2, and 3, of the Convention.

90. Moreover, the Committee finds the following general features of the Lithuanian legal framework as not being in compliance with article 6 of the Convention:

- (a) Lack of clear requirement for a public to be informed in an adequate, timely and effective manner (article 6, para. 2);
- (b) Setting a fixed 10 working-day period for inspecting the documentation and for submitting the comments (article 6, para. 3);
- (c) Making developers (project proponents) rather than relevant public authorities responsible for organizing public participation, including for making available the relevant information and for collecting the comments (article 6, paragraph 2 (d) (iv) and (v), and article 6, para. 6);
- (d) Requiring that comments submitted should be “motivated” and restricting those entitled to submit such comments to the “public concerned” (article 6, para. 7).

B. Recommendations

91. The Committee, pursuant to paragraph 35 of the annex to decision I/7 and taking into account the cause and degree of non-compliance, recommends to the Meeting of the Parties to:

- (a) Pursuant to paragraph 37 (b) of the annex to decision I/7, recommend to the Government of Lithuania to take the necessary legislative, regulatory, administrative and other measures to ensure that:
 - (i) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;
 - (ii) There are reasonable time frames for different phases of public participation taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
 - (iii) There is a clear responsibility on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments;

- (iv) There is a clear possibility that any comments can be submitted by any member of the public, even if the comments are not “motivated”; There is a clear correlation between the time period(s) for informing the public about the decision and making available the text of the decision together with the reasons and considerations on which it is based with the time frame for initiating review procedures under article 9, paragraph 2, of the Convention;
- (v) For each decision-making procedure covered by article 6 of the Convention a public authority from which relevant information can be obtained by the public and to which comments or questions can submitted is designated;
- (vi) All plans and programmes relating to the environment are subject to appropriate public participation.

(b) Pursuant to paragraph 37 (c) of the annex to decision I/7, invite the Government of Lithuania to draw up an action plan for implementing the above recommendations with a view to submitting it to the Committee by 31 December 2008.

(c) Invite the Government of Lithuania to provide information to the Committee at the latest six months in advance of the fourth meeting of the Parties on the measures taken and the results achieved in implementation of the above recommendations.
