LIETUVOS RESPUBLIKOS APLINKOS MINISTERIJA
THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA

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REGARDING THE DRAFT FINDINGS AND RECOMMENDATIONS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE REGARDING COMMUNICATION ACCC/C/2006/16

Please find enclosed comments of the Ministry of Environment of the Republic of Lithuania regarding the draft findings and recommendations of the Aarhus Convention Compliance Committee.

We would like to emphasise that the representatives of the Ministry of Environment are ready to come and present the explanations to the Committee for consideration of the issues set forth in the recommendations.

Enclosed: Comments Regarding the Draft Recommendations of the Aarhus Convention Compliance Committee

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Comments Regarding the Draft Recommendations of the Aarhus Convention Compliance Committee

We are grateful for the draft recommendations of the Aarhus Convention Compliance Committee, which will benefit development of legal regulation as to engagement of the public in the spheres of territorial planning, estimation of environmental impact, etc. We nevertheless would like to draw the attention of the Committee to specific conclusions, which, in our opinion, have been made without overall estimation of the collected information.

As clause 55 of the draft recommendations sets forth, the Committee may consider only the actions taken after the effect day of the Convention in the Republic of Lithuania, i.e. the actions which took place following 28 April 2002. We would like to notice that absolutely all processes of the detailed planning on which the Committee commented took place prior to the due date, i.e. at the time when the requirements of the Convention were yet not effectual in the territory of Lithuania. The detailed plan was approved on 5 April 2002, i.e. prior to the effect day of the Convention, whereas all other actions as commented by the Committee were accomplished even earlier. Therefore, the conclusion of the Committee (clause 88), setting forth that the Republic of Lithuania breached the Convention while preparing the detailed plan of Kazokiškės landfill, is incomprehensible. We assume that Lithuania could not breach the requirements, as the requirements of the Convention were not applicable to Lithuania during preparation, consideration, coordination and approval of the detailed plan of Kazokiškės landfill. With reference to the aforementioned, we request to make clause 88 of the recommendations of the Committee more clear, taking into account that Lithuania could not breach the requirements of the legal act which was not effectual in its respect.

We would like to note that the recommendations are of general nature and thus implementation of such might cause uncertainty, taking into consideration the fact that since 2002 a series of revisions of legal acts have been implemented in order to improve legal regulation.

We cannot accept that in the course of the process of territorial planning, environmental impact assessment the public was informed of setting out of Kazokiškės landfill of the regional system of waste management of Vilnius County in an inadequate, untimely and inefficient manner, as it was done pursuant to then effectual provisions of the Law on Territorial Planning and the Law on Assessment of Environmental Impact of the Planned Economic Activity, which were generally acceptable in terms of provision of information to the public prior to the effect day of the Aarhus Convention as of 28 April 2002.

We cannot accept that (clauses 65 and 72 of the recommendations) there are no evidences of the notice inviting to get familiarised with the environmental impact assessment programme and give comments and suggestions in this respect. Such notice appeared in newspaper *"Elektrėnų žinios"* of 23 March 2002.

And there is no reason for differentiation of the local press (clauses 66 and 67 of the recommendations) into more efficient or readable, for only two local newspapers are published in Elektrėnai Municipality – *"Elektrėnų žinios"* and *"Elektrėnų kronika"*. They both have been published since 2000, with the circulation of each at the beginning and at present reaching respectively 500-600 and 1500 copies. Issued once a week on Fridays, they are distributed in usual ways of distribution and equally readable among the local residents (equally popular). Therefore, the national legal acts certainly cannot introduce the requirement of efficiency or readability for the notices on the procedures of detailed planning or environmental impact assessment to the public.

It has to be noted (as we have informed in our previous letters) that, while considering the environment impact assessment statement during the process of environmental impact assessment, two public discussions with Kazokiškės community were arranged, and not a single one as provided by legal acts. Furthermore, notices on public discussions were not only published in the local press, but also posted on the notice board of the neighborhood. It has to also be noted that the representatives of the Lithuanian Green Movement took part in the Steering Committee of the project and took part in the open public hearing meetings of the environmental impact assessment statement and later, in 2002, presented the project as a good case example at the Green Week Conference of the European Parliament in Brussels.

Taking into account the stated above and information which was forwarded by the Ministry of Environment to the Aarhus Convention Secretariat in 2006 – 2007, we assume that the public had every opportunity to get acquainted with the planned activity already at the early phase of the process and take part in the process of environmental impact assessment.

We cannot accept that (clause 79 of the recommendations) the definition of motivated proposals in the national law restricts submission of any comments, analyses, information or opinion regarding the planned activity, as it is defined in clause 7 of Article 6 of the Aarhus Convention. Comments, analyses, information or opinion are in any case based on specific information flow, data or willingness. Saying that "the activity displeases and that's it" without giving any information or opinion as to why and how parallels to a reaction, and not an opinion, information, comments or analysis. All proposals providing certain information, requests or opinion are recorded in accordance with the requirements of the national law.

We would like to emphasize that upon Lithuania's ratification of the Aarhus Convention and full effect of such, as well as in the process of transposition of the provisions of EU Directive 2003/35 into the national law, improvement was made to the procedures of provision of information to the public in the processes of environmental impact assessment, territorial planning and issuance of permits.

Some recommendations pertaining to the process of detailed planning have been already implemented, taking into account that legal regulation, which was applicable at the time of preparation of the detailed plan of Kazokiškės landfill, has changed through concretisation and extension of the public rights to participate in the process of preparation of territorial planning. For instance, the recommendation of the Committee suggesting defining of legal regulation which would secure availability of time for the public to get familiarised with the adopted decisions in the field of territorial planning and ensuring public accessibility of the text of the decision along with the substantiating motives and entitling the public to apply regarding rehearing of the adopted decisions at court and (or) reconsideration by another independent and objective authority established in accordance with the procedure defined by the laws in order to traverse legality of the decision, actions or omission in legal and procedural respect. We would like to draw the attention of the Committee to the fact that the national legal acts currently enable the public to get acquainted with the adopted administrative decisions in the field of territorial planning and precisely define the procedure of appeal against such decisions. Pursuant to the Law on Territorial Planning, persons are familiarised with the document of territorial planning and have the right to appeal against the intended decisions to the organiser of planning prior to approval of the document of territorial planning (in accordance with the procedure established by the Law on Territorial Planning), and the decision of the former regarding comments is subsequently checked and assessed by the institution monitoring territorial planning. The decision of such institution may be subject to appeal to a special prejudicial institution – State Territory Planning and Construction Inspectorate, and the decisions of the latter may be appealed against at court.

We would like to point out that in accordance with the requirements of the Convention the public has the right to also appeal against the decisions of the approved detailed plan. We assume that the recommendation of the Committee, setting forth that any person must be enabled to get familiar with the text and the substantiating arguments and appeal against it, has been implemented. Pursuant to clause 7 of Article 26 of the Law on Territorial Planning, the approved detailed plan (i.e. the decision approving the plan and the complete detailed plan) is published in full in the local press or a formal notification is given of the approval of the plan, while the plan in its entirety is publicised in the website of the respective municipal authority. The formal official notification of the adoption of the legal act is to include the date of adoption, the number, the title, if any, of the legal act, the matter of the adopted decision and the address of the website wherein the legal act is posted. Taking into account publication costs, all detailed plans are, quite naturally, published in the websites of respective municipalities, therefore each person has an access to comprehensive information on approved plans, their content and motives of their adoption. Here any person may also get acquainted with various conclusions of the state authorities regarding the detailed plan, proposals of other persons and their assessment, i.e. full information, including the text of the adopted administrative decision. Under the Law on Territorial Planning the public is entitled to appeal against the decisions on approval of the detailed plan. Taking into consideration the fact that legal proceedings require much time and substantial costs, the law establishes that the public may refer to the administration of the county governor or the authority authorised by the Government or the Ministry of Environment regarding legality of the decisions of the approved detailed plan, and the latter, having considered the requests of interested persons, initiate cancellation of respective decisions of territorial planning documents in accordance with the administrative procedure or refer to court in the absence of the possibility to cancel the decisions of territorial planning documents in accordance with the administrative procedure. Persons may also refer to court with regard to decisions approving detailed plans in accordance with the procedure established by the Law on Administrative Procedure. The Ministry of Environment would be grateful if the Committee could concretise the recommendation referred to herein, for at present we see no obstacles which would prevent the public from getting familiarised both with the decision approving the detailed plan and the plan itself and the motives that affected the decisions. Furthermore, the national legal acts provide for indeed a wide range of opportunities of appellation against such decisions, entitling the public to refer not only to court, but also to a specialised authority which is responsible for reconsidering of legality of the decision on approval of the detailed plan and cancellation of such if any breaches are found out.

The regional plan of waste management was undertaken and all substantial coordination procedures took place prior to the effect day of the Convention, and only the final approval of the plan (approved by the mayors of the municipalities and the County council) was made after the effect day of the Convention. Preparation of the detailed plan commenced and terminated prior to the effect day of the Convention. The primary procedures of environmental impact assessment (preparation of the environmental impact assessment programme, announcement about the prepared environmental impact assessment programme and invitation to get familiar with it, the start of preparation of the environmental impact assessment statement) were initiated prior to the effect day of the Convention. The Ministry of Environment sustains the opinion of the Committee that the Committee should focus on the actions taken after full effect of the Convention, i.e. 28 April 2002.

With reference to the stated above and information forwarded by the Ministry of Environment to the Aarhus Convention Secretariat in 2006 – 2007, we assume that some recommendations are of particularly general nature, while some of them have been already implemented. Therefore, pursuant to the provisions of clause 55 of the recommendations, we suggest that the Committee should concretise the recommendations with the focus put on the actions taken after 28 April 2002 and revisions of legal regulation.

We would like to take notice of insufficiently smooth notification of the parties of the prepared draft recommendations. The Ministry of Environment did not receive the draft recommendations straight after appearance of such (while the lawyers of Kazokiškės community did receive them), but was presented a covering letter informing that such recommendations were being sent. In the meantime, the lawyers of Kazokiškės community arranged press conferences and caused a great stir with regard to the recommendations (which were not familiar to the other party, i.e. the Ministry of Environment). It was only after a number of telephone calls to Aarhus Convention Secretariat and a few days that the recommendations reached the Ministry of Environment. We believe that Aarhus Convention Secretariat should inform both parties about the draft recommendations in an adequate manner so that both parties could keep a proper dialogue instead of unilaterally and publicly commenting on the text of the respective document, which the other party is unable to comment on due to its unavailability.