

RECHTSANWÄLTE
SIMONFAY & SALBURG
WIEN – BUDAPEST - VILNIUS

Mr.
Jeremy Wates
Secretary to AARHUS convention
United Nations
Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais de Nations
CH-1211 Geneva 10
SCHWEIZ

Vienna, on March 8th, 2006
06018 / US/BS 3

**COMMUNICATION
TO THE AARHUS CONVENTIONS COMPLAINTS COMMITTEE**

1. Information on correspondent submitting the communication:

The public organisation Kazokiskes community registered under the laws of the Republic of Lithuania under register number VO02-06

The public organisation "Kazokiskes community" is an association of the citizens of the village of Kazokiskes in Lithuania.

2. Representatives:

The public organisation "Kazokiskes community" authorizes the lawyers
Ulrich Salburg, Neustiftgasse 3/6, A-1070 Vienna and
Ramune Duleviciene, Gedimino pr. 18/5a, LT-2001 Vilnius

to represent them in respect of the communication with the AARHUS convention compliance committee

II State concerned:

Republic of Lithuania

The Republic of Lithuania ratified the AARHUS convention on January 28th, 2002

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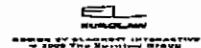
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III.

The Lithuanian authorities intend to establish a landfill with a total capacity of 6,8 Mio. tons of waste over a period of 20 years, just besides the village of Kazokiskes, where the correspondent live.

The planning for this landfill dates back to the year 1999, when it was decided by the municipality of Elektrenai (Kazokiskes is within the territory of Elektrenai) to draft a plan for a landfill in Kazokiskes.

The Elektrenai municipality contracted the private company UAB Baltic Consulting Group (UAB is the Lithuanian abbreviation of "limited company") to draft a plan for the landfill.

Information on the drafted plan for Kazokiskes landfill was announced in the newspaper "Elektrenu Zinios" on February 23rd, 2002 stating that the detail plan would be publicly exposed at the Elektrenai municipality from February 23rd 2002 to March 26th, 2002 and the public discussion of the plan would take place on March 26th, 2002 at the Elektrenai municipality.

The advertisement informed that within a month from the day of the public discussion, applicants could appeal against solutions or the drafted "detailed plan". In this respect it has to be noted that the so-called "detailed plan", which was available at this time, was extremely superficial and imprecise. From this plan it was not clear, which type of waste the intended landfill should receive, further according to this plan the amount of biogas, which originates from the landfill in the year 2030 will be 77,282.000 m³ per year. According to the "detail plan" beginning with 2006 50 % of the biogas should be collected. But the plan provides no description at all how this gas should be collected and how this biogas collection system should function.

This so-called "detailed plan" further provides no information at all, how the waste, which will be land filled in Kazokiskes will be treated, sorted or which concrete measures are taken to avoid air pollution or which measures are taken to recycle or sort the waste or which measures are taken to avoid pollution of the ground water. When the before mentioned public hearing took place, no information on this very important details for the neighbours of the landfill, the correspondents, was available.

Further it has to be noted that the announcement on the "public hearing" was placed in local papers, which are not very popular and that the information provided was extremely superficial. Therefore hardly any residents, who are effected by the intended landfill, attended this meeting.

On April 15th, 2002 the so-called "detailed plan", which – as described above – was very superficial, was approved by Elektrenai municipality. In May 2002 based on the above "detailed plan" the consulting company UAB Baltic Consulting Group drafted an environmental impact assessment report concerning the indented landfill in Kazokiskes. This environmental impact assessment report was approved by the Ministry of Environment of Republic of Lithuania with decision number 01-24-3257 on June 12th, 2002.

Evidence:

Information of the Ministry of Environment of the Republic of Lithuania on the decision made to approve the landfill in Kazokiskes **Annex 1**

The Ministry of Environment of the Republic of Lithuania later on provided the information to the public regarding the above decision. In this information it is only mentioned that the amount of waste deposited in the landfill will be between 318.800 to 364.700 tons a year with a total capacity of 6,8 million tons over a period of 20 years.

Therefore the information given by the Ministry of Environment contradicts the so called plan as the detailed plan states that 250.000 tons per year should be dumped in Kazoksikes landfill.

It is further explained in this information of the Ministry of Environment that it is only intended to dump the waste at Kazokiskes and that no waste management or waste treatment is intended, like for example sorting, composing, recycling, etc. Further in this information it is stated that not only municipal waste, but also construction and demolition waste and municipal waste water treatment sludge will be disposed in the Kazokiskes landfill.

In this respect it is very important to note that the information available to the public in the year 2002, when the Ministry of Environment of the Republic of Lithuania took the above decision and when the public discussion on the plan to establish a landfill in Kazokiskes was discussed, no final plan of the landfill, which should be build now was available. As mentioned above the plans available in the year 2002 were extremely superficial and did not provide any of the necessary technical details, for example no information at all on the system on how to collect the biogas and no proper detailed information at all on how to secure the ground water and so on.

In this respect please note, that the "technical project" for Vilnius County Regional landfill in Kazokiskes was approved only in 2005, so three years after the plans were discussed publicly.

The reason therefore is that in the year 2002, when the public discussion took place, no detailed plan, no technical project was existing. This decision to approve the technical project was not discussed in public, was not made available to the public concerned and no information was provided on this decision.

The information available in the year 2002, especially the environmental impact report, which was the base is superficial and does not provide the necessary information to evaluate the effects of the intended landfill in Kazokiskes, is not just the opinion of the correspondents. In January 2004 the Ministry of Health of the Republic of Lithuania established a work group to evaluate, if the impact on health of the intended landfill was duly assessed. This work group came to the conclusion that the landfill is no sufficient and therefore recomended to reassess the impact of the intended landfill in Kazokiskes.

Evidence:

Minuets of the board meeting of UAB VAATC (this company is owned by the municipality, for which the intended landfill serves and has a task to establish and operate the landfill) of June 29th, 2005. In this minuets is clearly stated that the technical project, therefore the technical specifics of the landfill were only confirmed on June 29th, 2005. **Annex 2**

On request of the correspondents the responsible Lithuanian authority, the Vilnius Region Environmental Protection Department, confirmed that the technical project was only approved by the authority on May 13th, 2005

Annex 3

Certificate of the work group of the Ministry of Health of the Republic of Lithuania

Annex 4

Therefore is clear that in the year 2002, when (a kind of) public information took place no information on the technical details of the intended landfill were available.

The correspondents are highly convinced that the indented landfill (on the base of the information available form the so called "detailed plan" form the year 2002) does not fulfil the criteria established by European Union law on landfills. Especially the criteria that the best available technology is used to avoid environmental pollution according to directive 96/61/EC (IPPC directive). There is no waste treatment or any other modern technology to avoid pollution. Also the information that a gas collection system is established, which will only collect max. up to 50 % of the biogas originating from the landfill is not at all satisfactory.

The correspondents are highly convinced that in general a modern waste treatment, like waste incinerator waste sorting and recycling measures have to be followed in order to be in line with the applicable European Union legislation and also national legislation.

In this respect it is important to notice that the Lithuanian authorities refused any discussion or any procedure to review or even discuss the technical details of the intended landfill/ with the argument that the decision to established the landfill was taken in the year 2002 and therefore no further procedure or discussion or whatever is necessary.

Because of this position of the Lithuanian authorities, the correspondents complained to the European Commission (DG Environment) for violation of European Union Law by the Lithuanian authorities. This complaint was mainly based on an alleged violation of directive 96/61/EC (the IPPC directive), because according to the information available the intended landfill under no circumstances can fulfil the requirement of directive 96/61/EC that the best available technology is used in order to prevent environmental pollution.

Further the correspondent were convinced that other landfills specific directives are violated, especially the packaging directive. But regarding the packaging directive the European Union informed the correspondent that due to a transition period granted to Lithuania when joining the European Union with May 1st, 2004, the packaging directive is for the time being not applicable to the Republic of Lithuania.

After coming into force of the directive 2003/35/EC on European level with June 25th, 2005 the correspondent also complained on this base to the European Commission and the Lithuanian authorities. Directive 2003/35/EC is indented to implement the AARHUS convention on European Union level. As the AARHUS convention, the directive 2003/35/EC provides for information to the public and especially also that the public has access to justice in order to review "environmental decision" in front of an independent court on procedure and substance.

Neither the Lithuanian authorities nor the European Commission denied that this directive is in principal applicable to the intended landfill in Kazokiskes, because an IPPC permission

according to directive 96/61/EC is required for the intended landfill and according to the amendments to this directive through directive 2003/35/EC, public participation and access to justice for the public are foreseen.

In respect of this directive (therefore in respect of implementing the AARHUS convention on European Union level) the Lithuanian authorities responded to the complainants/the correspondent that an IPPC permission will be issued for this landfill, but only after the landfill was build shortly before the landfill starts operation.

Evidence:

Letter of the State Inspectorate on Environmental Protection of Vilnius of July 19th, 2005

Annex 5

For the correspondent it is not acceptable that the procedure (in this case the procedure on issuing an IPPC permission according to directive 96/61/EC) is only started after construction of the landfill before operation, because this procedure foresees the public participation and this procedure also foresees the access to justice for the public.

The AARHUS convention and directive 2003/35/EC require that the public is early and efficiently informed and included in the procedure. A procedure that only starts after the construction of a landfill is finished is in no way early and efficient. It is especially not efficient, because it is very unlikely that the landfill will be built with highly expensive costs, but afterwards not operated.

By constructing the landfill the authorities established facts, which are irreversible and automatically lead also to the operation of the landfill without the public having a chance to participate in the procedure and without the public having the chance to have access to justice. The Lithuanian authorities till now did not change the position and continue to state, that the procedure on issuing a permit for the landfill will be only started after the construction is finalized.

In the meantime the technical project was tendered, a contract with a construction company signed and the construction work will begin as soon as the climate allows so, therefore in spring 2006.

Also the complaint of the correspondent to the European Commission was not successful as the Commission was stating that according to directive 96/61/EC member states are only required to ensure that no installation is "operated" without an IPPC permission, therefore it does not constitute a violation, if the landfill is built without a permission.

In this respect the correspondents would like to stress that the European Union is co-financing the intended landfill in Kazokiskes with up to 50 % according the Financing memorandum signed between the Republic of Lithuania and the European Union on April 18th, 2003, ISPA 2002/LT/16/B/BE/012.

The current situation is therefore that the Lithuanian authorities refuses to provide a procedure, which guarantees public participation and access to justice for the public before the landfill is built and the Lithuanian authorities states that such a procedure will be only initiated after the construction is finalized shortly before operation of the landfill.

The European Commission is confirming that this is in line with European Union legislation,

especially also in line with directive 96/61/EC as amended by directive 2003/35/EC, which is supposed to implement the AARHUS convention on European Union level.

Evidence:

Letter of the European Commission, DG Environment of December 12th, 2005 **Annex 6**

IV. Nature of alleged norm compliance

The Republic of Lithuania as party to the AARHUS convention failed to provide for public participation in respect of the intended landfill in the village of Kazokiskes.

The public had the chance to discuss the original idea of establishing a landfill in Kazokiskes in the year 2002. But at this time no details of the intended landfill were known respectively no technical plan or technical project existed. Only in the year 2005 the technical project of the intended landfill was finalized.

The Lithuanian authorities approved this technical project and later on tendered the construction of the landfill. Further the construction permission was issued for the building of the landfill in January 2006. In respect of these two decisions there was not any public participation, despite the fact that the correspondent, the community of the village of Kazokiskes, where the landfill is going to be build, raised several times their concerns to all relevant Lithuanian authorities.

The authorities are only stating that an IPPC permission will be issued after the construction of the landfill is finalized before the landfill starts operation. In this procedure according to European Union law, directive 2003/35/EC, the public concerned/the correspondents are entitled to participate.

But as this procedure is only initiated after the construction is finalized, therefore when the facts are established and nothing can be changed anymore for economical reasons, a participation in this procedure is not at all sufficient to provide for public participation as foreseen by Art. 6, chapter 4, of the AARHUS convention, which provides *that each party shall provide for early public participation, when all options are open and effective public participation can take place.*

In this respect the alleged non-compliance concerns a specific case, the intended landfill in Kazokiskes village and the violation of the correspondents right, the association of inhabitants of Kazokiskes village, to participate in the procedure regarding the determination of the technical details and the technology used to protect environment and the interest of the correspondent in respect of the intended landfill.

Further the decision to approve the technical project/details of the intended landfill is a decision in the meaning of Art. 6 of the AARHUS convention, as it permits on behalf of the competent authorities (responsible authority in Lithuania for environmental protection) the construction of the landfill according to the technical project approved.

Further a construction permission was issued for the intended landfill, ~~this is also a decision~~ in the sense of Art. 6 of the AARHUS convention, as it allows the construction and the establishment of the landfill. Also in respect of this decision there was no public participation and furthermore there was no access to a review procedure before a court of law or another independent body to challenge this decision on substance and procedure.

V. Provisions of the convention relevant for the communication

As mentioned under point IV. the communication concerns Art. 6 of the AARHUS convention on public participation in decisions and specific activities.

The establishment respectively the construction of the intended landfill in Kazokiskes is an activity listed in Annex 1 of the convention point 5, as the intended landfill receives more than 10 tons per day and has a total capacity of much more than 25.000 tons.

With the approval of the technical project and the construction permission the authorities permitted the establishment of this landfill with its specific technical characteristics. Differently to the above mentioned directive 2003/35/EC, which regulates that the member states of the European Union should ensure that no installation (in this respect a landfill) should be operated without a prior permission according to directive 96/61/EC, for which a public participation, similar to AARHUS convention according to directive 2003/35/EC is foreseen, the AARHUS convention does not limit the application of the convention to the "operation" of a landfill, but to a landfill as such. Therefore the Republic of Lithuania as party of the AARHUS convention was violating Art. 6 of the convention not providing for any public participation in respect of the approval of the technical details/technical project of the landfill and by not providing public participation in respect of the construction permission for the landfill.

The information given in the year 2002 and the limited public participation in the year 2002 were not sufficient at all to provide for sufficient public participation in line with the AARHUS convention. The technical details of the landfill were not known at all at this time and therefore effective public participation was not possible. Especially in the year 2002 the details as required by Art. 6 were missing (description of the significant effect of the proposed activity on environment including an estimate of the expected residues and emissions, a description of the measures envisaged to prevent and/or reduce the effects including emissions).

Especially an outline of the main alternatives studied was also not available, for example why a landfill of this tremendous dimension is necessary and not a waste incinerator.

As mentioned above the authorities will carry out an IPPC procedure, which requires public participation after the landfill is constructed. Even if the public/the correspondents are really able to participate in this procedure, which will be started only after construction of the landfill, this will not be in line with Art. 6 of the AARHUS convention, as Art. 6 chapter 4 requires that each party of the convention shall provide for early public participation, when all options are open and an effective public participation can take place.

After the construction of the landfill no options are open anymore, because for economical reasons the landfill will be operated after it is constructed, especially taken into account that according to the above mentioned financing memorandum between the European Union and the Republic of Lithuania the landfill will cost around EUR 20 Mio.

VI. Violation of Art. 9 of AARHUS convention

According to Art. 9 chapter 2 of the AARHUS convention each party to the convention shall ensure that the members of the public concerned having a sufficient interest, have access to a review procedure before a court on substance and procedure regarding decisions subject to Art. 6 of the AARHUS convention.

As mentioned above the decision on establishment of the landfill, especially the establishment of this specific landfill with its technical characteristics (the detailed plan is not even known to the correspondents, only the very superficial plan of the year 2002) is a decision in the sense of Art. 6 chapter 1 of the AARHUS convention, this decision permits the activity listed in Annex 1 "construction of a landfill with a total capacity of more 25.000 tons and a daily capacity of more than 10 tons", therefore according to Art. 9 of the convention the correspondents, who are direct neighbours to the landfill (some of the members of the association of Kazokiskes community live only a few hundred meters away from the landfill) represent the public concerned and because of the direct effect of the landfill the correspondents also have a sufficient interest.

The correspondents respectively the individual persons being member of the correspondent (Kazokiskes community) did not have the chance to challenge the approval of the technical details or the construction permission of the landfill in front of a court, especially as they even never received these decisions, which is a precondition for taking any legal action.

Therefore the Republic of Lithuania is in the view of the correspondents violating Art. 6 and Art. 9 of the AARHUS convention by taking decisions to build the Kazokiskes landfill (which are two decision, one to approve the technical project of the landfill by the environmental authorities and one to issue the construction permission for the landfill by the local authorities) without public participation of the public concerned and without the possibility for the public concerned to review the decisions in front of an independent court.

In this respect the correspondents would like to note that they are highly convinced that also on European Union level it would be necessary before building the landfill to give the public concerned the chance to participate in the procedure and to provide access to justice, but as mentioned above the European Commission, which was addressed by the correspondents, responded that this is not the case, because a public participation and access to justice is only necessary before a landfill/installation starts operation, but not before construction.

In this respect the correspondents are highly convinced that also the European Union is violating the AARHUS convention, as the European Union is co-financing this landfill and further more the European Union did not react to the complaints of the correspondents.

If the position of the European Commission (DG Environment) would be correct, that according to the European Union Law directive 2003/35/EC respectively directive 96/61/EC "an activity" listed in Annex 1 of the AARHUS convention can be constructed and build without public participation and access to justice as long as public participation and access to justice is provided after the construction but before operation, than the European law does not correctly implement the AARHUS convention.

As mentioned above the AARHUS convention provides clearly 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.

It should be clear to any reasonable person, that an effective public participation after construction of an installation and after spending million of Euros for an installation is not effective, because no options are open at all anymore. If therefore the European Union was transposing the AARHUS convention into EU legislation in a way that public participation is only necessary after construction, before operation, the EU legislation is not in compliance with the AARHUS convention.

The correspondents are aware that for the time being they can not submit correspondence regarding the European Union to the compliance committee as the European Union was only ratifying the AARHUS convention on February 27th, 2005, but the correspondents would like to note that they will also submit a communication about the non-compliance of the European Union as soon as this is possible according to the information of the correspondents this should be with May 27th, 2006.

VII. Use of domestic remedies or other international procedures

This correspondence to the complaints committed concerns the construction permission and the approval of the technical details therefore the two decision, which are the base for the construction of the intended landfill, which still start probably in March 2006.

Against these decisions the correspondents took no legal action as these decisions are not even available to the correspondents and therefore it is not possible to take any legal action.

The correspondents took legal action in the year 2002 against the decision of the Ministry of Environment approving the environmental impact assessment report of June 12th, 2002.

As stated above this decision was based on very superficial information, which was not at all the base for the current landfill, which will be build, as the plan for the landfill was developed only much later and finalized in the year 2005.

The appeal of the correspondents against the decision of June 12th, 2002 was dismissed by the Vilnius District Court, because the correspondents missed the period for submitting claims, against this decision the correspondents appealed, but the claim was on the same ground dismissed by the Supreme Administrative Court of the Republic of Lithuania as final instance.

Further as mentioned above the correspondents also addressed the European Commission, but the European Commission is of the opinion that no public participation and no access to justice is required for the establishing/building of a landfill and that it is sufficient (according to European law implementing the AARHUS convention) to start the procedure providing for public participation and access to justice only after the construction is finalized before the landfill starts operation.

VIII. Confidentiality

The correspondents **do not** request confidentiality regarding the content of this communication or regarding the identity of the correspondents and their representatives.

IX. Supporting documents

Information of the Ministry of Environment of the Republic of Lithuania on the decision made to approve the landfill in Kazokiskes

Annex 1

Minutes of the board meeting of UAB VAATC (this company is owned by the municipality, for which the intended landfill serves and has a task to establish and operate the landfill) of June 29th, 2005. In this minutes is clearly stated that the technical project, therefore the technical specifics of the landfill were only confirmed on June 29th, 2005.

Annex 2

On request of the correspondents the responsible Lithuanian authority, the Vilnius Region Environmental Protection Department, confirmed that the technical project was only approved by the authority on May 13th, 2005

Annex 3

Certificate of the work group of the Ministry of Health of the Republic of Lithuania

Annex 4

Letter of the State Inspectorate on Environmental Protection of Vilnius of July 19th, 2005

Annex 5

Letter of the European Commission, DG Environment of December 12th, 2005

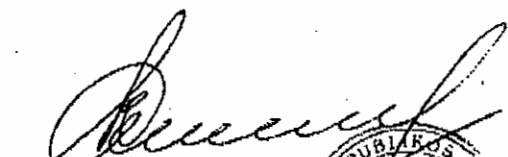
Annex 6


Regarding all documents just the English translation is submitted. The Lithuanian original can be submitted on request.

X. Summary

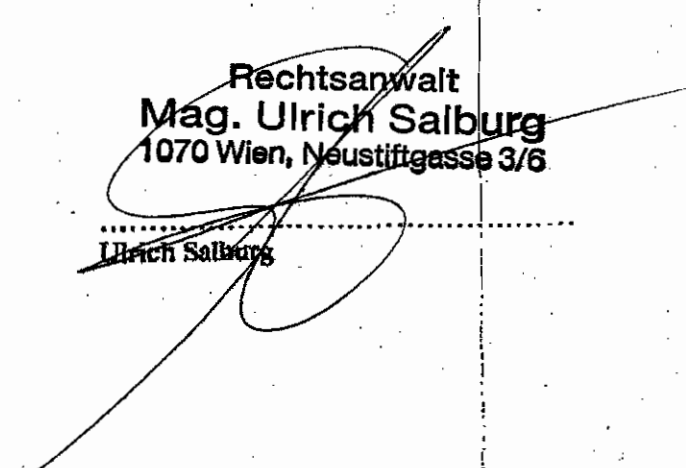
Please see Annex A

XI. Signature


Ramune Duleviciene



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