

Name of Exercise: Protest against illegal landfill construction

Location: Kharkiv Region, Ukraine

**Participation Exercise
under which Article?** *Article 6*

Purpose of Participation Exercise:

To invite comments on the decision of the regional authority to grant permission for the construction of a landfill (a solid utility waste dump). Exercise run by NGO.

Background:

At the start of 1996, the local environmental group 'Pechenegy' called for citizens and public organisations in the Kharkiv area to send letters of protest to the public authorities on the issue of the planned construction of a solid utility waste ('SUW') dump in one of the cleanest places of Kharkiv district - the village Sorokivka. Representatives of the public committee of inhabitants of the villages of Vilhivka and Sorokivka, Zoya Victorivna Kiykova and Mikola Grigorovich Dogadaylov held a meeting at which a large number of documents, mostly appeals to the organs of state power with the signatures of local citizens and the responses of government officials, were discussed. But there were also some legally significant documents, like the decision of the Vilhivka village council and other organs of local self-government on the prohibition of the construction of SUW dump. The quality of the environmental expertise was very low. In contradiction to the requirements of the law, there was no public participation in environmental expertise.

On September 9, 1996, Kharkiv regional state administration signed order #877 assigning the land for the construction of the dump. The content of the document was in contradiction to the enacted legislation on local self-government and ignored the norms of environmental and land law. Using this document, the construction company tried to start construction of the project. The only route to challenge the legality of this decision was an immediate appeal to the court. However, several court proceedings took place without any positive result, primarily, because of the novelty of this type of case for the court and imperfection of legislation. The court hearings, though unsuccessful, suspended construction until they were finished. The hearings became an obstacle to construction.

For three months confrontations took place between demonstrating citizens and the authorities. After one of the court decisions which allowed construction to start immediately, local citizens protested and formed a "human barrier" in the way of construction machinery. There was no violence. All activities by citizens were completely legal and based on the decision of the Vilhivka village council.

Two further actions took place. The citizens initiated a "legal expertise" (a review) of the administrative and court proceedings by the Institute of State and Law of the National Academy of Sciences of Ukraine, and simultaneously threatened to bring a case before the European Court of Human Rights based on the newly ratified Council of Europe resolutions. Finally, the Supreme Arbitration Court acceded to the demands to review the legality of the decisions and lower court proceedings. The sitting of the Presidium of the Supreme Arbitration Court on which the protest was examined took place on December 26, 1997. Kharkiv regional administration was not represented, and the case was heard in its absence. The protest of the President of the Supreme Arbitration Court and the suit of the Vilhivka village council were upheld and the approvals of the authorities without public participation were set aside.

Participation Techniques Used:

First, local activists organised a public committee to oppose the landfill construction. The committee was organised spontaneously during the general assembly of villagers who decided that there should be some collective body to represent and protect their interests in the conflict.

Secondly, the public committee put pressure on the local government, on the basis that it had never given written permission for taking the land for construction of the dump. A few public committee members were also the deputies of the Vilhivka village council. They supported decisions favourable for the committee and public interests.

Thirdly, a local referendum took place, where 90% of the citizens said that they were against the construction of the waste dump. The public committee, pursuant to the Constitution of Ukraine and the Law of Ukraine "On all-Ukrainian and local referendum" of 3 July 1991 initiated the local referendum and held it.

Fourthly, two public hearings on the matter were held. Over 250 villagers attended each hearing; minutes were circulated at both hearings; the public was able to ask questions, present comments, and introduce suggestions. Public hearings were organised by the public committee in conjunction with the Vilhivka village council.

All of these methods proved unsuccessful and the citizens turned to the courts, where results were also not easy to achieve. The establishment of the public committee and the local referendum took place before the decision of Kharkiv regional state administration #877 was signed. Both public hearings were held after this decision was issued. The public committee put pressure on the local government during the entire process. There was no public participation in the decision-making by the regional state administration.

The information about all of the named activities was spread through announcements (leaflets), oral messages from local public committee activists, and local media (newspapers).

Who participated?

Referendum: 90% of the citizens possessing the right to vote (local voters/electorate).

Public hearings: public, regional and local authorities.

Stage(s) at which public participated in the process:

Public participated throughout, but used means outside the EIA process, i.e. there was no public participation before the environmental assessment process started or the decision of Kharkiv regional state administration was issued.

What information was made available?

All of the information the local public committee possessed was available to anyone interested (this is one of the reasons why the media coverage was substantial and significant). All of the information was primarily on paper (the best option for villagers). All of the information was free of charge.

What was the outcome of the public participation exercise?

The decision of the referendum became the main legal obstacle preventing the construction companies and the executive authorities from constructing the dump.

Comments of participants in the process:

At the very end, the case was successful from the point of view of the public, i.e. the decision of the regional authority to construct a solid utility waste dump was eventually repealed by the court. But in the long run, it turned out that the mentioned activities of the public, especially the referendum, added much to the successful resolution of the matter. The decision of Kharkiv regional state administration was repealed and the construction of the SUW dump next to village Vilhivka was prohibited. A special commission was established to study alternative locations for the dump with an obligatory public participation requirement.

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REC view on participation exercise:

It appears that the public had to resort to the use of referendum, since public participation in the decision-making process itself was absent. Furthermore, interested members of the public had the perception that the local authorities and the construction companies were not interested in following legally required procedures. Moreover, citizens were frustrated in their efforts to appeal to higher authorities to control the situation during the initial stages. This was because, historically, members of the public did not have any experience in appealing decisions of higher authorities and the authorities were not accustomed to public participation and public appeal of decisions. Finally, it required a decision by the Supreme Arbitration Court in Kiev in order to set aside an administrative decision contrary to law.

Significant omissions from requirements of Article 6:

It appears from the case study that Article 6 was not followed in nearly all particulars. However, the persons submitting the case study highlighted the following:

1. In contradiction to point c) of par.2 of Article 6 the public was not initially informed about the state authority responsible for decision-making.
2. In contradiction to point c) of par.6 of Article 6 the public was not initially informed on the measures and remedies to prevent or minimise negative impacts.

The decision of the lower court upholding the decision-making by the authorities was finally overturned by the appeals court, confirming that the particulars of the law were not observed in this case.