

ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

Administrative case number VD/3275/05/09

DECISION
ON DENYING ADMISSION OF THE CLAIM

9 July 2009

The Administrative Court of the Republic of Armenia, judge A. Mirzoyan, having examined, as per the claim, the issue of admitting the claim filed by the Transparency International Anti-Corruption Center NGO, the Helsinki Citizens' Assembly Vanadzor Office NGO, and the Environmental NGO Ekodar,

FOUND THE FOLLOWING:

On 8 July 2009, the Transparency International Anti-Corruption Center NGO, the Helsinki Citizens' Assembly Vanadzor Office NGO, and the Environmental NGO Ekodar filed a claim with the Administrative Court of the Republic of Armenia against the Republic of Armenia Government, the Republic of Armenia Ministry of Environmental Protection, the Republic of Armenia Ministry of Energy and Natural Resources, and a third party—the “Armenia Copper Program” closed joint-stock company, demanding:

In the procedure provided by Article 68(1) of the RoA Administrative Procedure Code, to invalidate license number HV-MSH-13/33 issued to the “Armenia Copper Program” CJSC on 8 February 2001 for operating the Teghut mine;

In the procedure provided by Article 68 of the RoA Administrative Procedure Code, to declare as null and void the Environmental Impact Assessment Affirmative Opinion number BP-31 approved by the RoA Minister of Environmental Protection on 3 April 2006;

To declare as null and void the Environmental Impact Assessment Affirmative Opinion number BP-135 approved by the RoA Minister of Environmental Protection on 7 November 2006;

To declare as null and void RoA Government Decree 1278-N dated 1 November 2007 “On Changing the Designated Purpose of Lands and Providing Land Plots for Implementing the Teghut Copper and Molybdenum Mine Site Exploitation Program”;

In the procedure provided by Article 65 of the RoA Administrative Procedure Code, to invalidate special license HV-L-14/90 issued to the “Armenia Copper Program” CJSC on 23 March 2004 for Mining the Teghut Copper and Molybdenum Mine Site, and, as a consequence, to invalidate the “License Agreement on Subsoil Use for Mining Purposes” (license agreement number 316 concluded on 9 October 2007) between the “Armenia Copper Program” CJSC, on the one hand, and the RoA Ministry of Trade and Economic Development and the RoA Ministry of Environmental Protection, on the other;

To invalidate special license number 21 on Exploration for Exploiting the Subsoil Mineral Resources, issued to the “Armenia Copper Program” CJSC on 29 December 2005, and, as a consequence, to invalidate the “License Agreement on Exploration for Exploiting the Subsoil Mineral Resources (license agreement number 140 concluded on 4 May 2006) between the RoA Ministry of Environmental Protection and the “Armenia Copper Program” CJSC;

To invalidate the Teghut Copper and Molybdenum Mine Site Exploitation

Program Concept Paper adopted by the Inter-Agency Committee Coordinating the Teghut Mine Site Development Program Support Activities in its session on 30 September 2005;

In the procedure provided by Article 66 of the RoA Administrative Procedure Code:

To obligate the respondents to prohibit the “Armenia Copper Program” CJSC from carrying out the activities contemplated by the Teghut Copper and Molybdenum Mine Site Exploitation Program.

Having reviewed the claim and the attached documents, the Administrative Court of the Republic of Armenia has found that they do not meet the requirements of Article 79 of the Republic of Armenia Administrative Procedure Code, and that the admission of the claim shall be denied on the following reasons:

According to Paragraph 1(4) of Article 79 of the Republic of Armenia Administrative Procedure Code, the Administrative Court shall deny the admission of a claim if “the claim has been filed by a person that obviously has no right to do so.”

Under Paragraph 1 of Article 3 of the Republic of Armenia Administrative Procedure Code:

1. Each natural person or legal entity has the right to apply to the Administrative Court in accordance with the procedure provided by this Code, if such person or entity believes that the administrative acts, actions, or inaction of state government or local self-government bodies or their officials:
 - 1) The rights and freedoms of such person or entity prescribed by the Republic of Armenia Constitution, international treaties, laws, and other legal acts have been violated or may directly be violated, including if:
 - a. Obstacles have been posed to the exercise of such rights and freedoms; or
 - b. The conditions necessary for the exercise of such rights have not been secured, although they had to have been secured by virtue of the Republic of Armenia Constitution, international treaties, laws, or other legal acts;
 - 2) An obligation has been illegitimately placed on such person or entity; or
 - 3) An administrative sanction has been illegitimately imposed on such person or entity in an administrative procedure.”

The Administrative Court of the Republic of Armenia finds that, under the requirements of Paragraph 1 of Article 3 of the Republic of Armenia Administrative Procedure Code, persons have the right to apply to the Administrative Court if they believe that their rights have been violated. In other words, a person may not seek court protection with any or abstract demands, but rather, may apply to court only when it is an interested party, i.e. the subjective rights of the person have been violated by an administrative body. Administrative proceedings primarily serve the protection of the rights and personal interests of the person and citizen. It means that administrative justice may be sought only by a person (natural person or legal entity), which believes that the administration has directly touched upon its rights or interests. Persons may not seek court review of any administration, which is not related directly to them, simply on the ground that they have a general interest in the legitimate conduct of administrative bodies. Whilst prescribing this approach, the Administrative Procedure Code of the Republic of Armenia does not recognize (subject to certain exceptions that do not concern this particular claim) the so-called “public complaint,” as it only stipulates the possibilities of seeking judicial protection of the violated rights, i.e. judicial protection that is due because of personal interest.

The plaintiffs in the filed claim are three non-governmental organizations: the Transparency International Anti-Corruption Center NGO, the Helsinki Citizens’ Assembly Vanadzor Office NGO, and the Environmental NGO Ekodar.

Paragraph 1(1) of Article 3 of the Republic of Armenia Law on Non-Governmental

Organizations provides:

“A non-governmental organization (hereinafter “an Organization”) is a type of societal amalgamation—an organization that does not pursue the aim of deriving a profit or distributing the profit between its participants, i.e. a non-commercial organization, in which natural persons, including citizens of the Republic of Armenia, foreign citizens, and stateless persons have unified in accordance with the procedure stipulated by law based on the commonality of their interests in order to satisfy their non-religious spiritual or other intangible needs, to protect their and others’ rights and interests, to provide tangible and intangible support to society or certain groups of society, and carrying out other activities for the public good.”

Article 15 of the Republic of Armenia Law on Non-Governmental Organizations provides:

“1. For achieving the objectives mentioned in its by-laws, an organization may in accordance with the procedure defined by law:

- 1) Disseminate information about its activities;
 - 2) Organize and conduct peaceful and unarmed meetings, gatherings, processions, and demonstrations;
 - 3) Represent and defend its and its members’ rights and lawful interests in other organizations, courts, and state government and local self-government bodies in accordance with the procedure defined by law;
 - 4) Cooperate with other non-commercial organizations, including international and foreign non-governmental non-commercial organizations, and, for the purpose of engaging in coordinated activities and representing and defending common interests, create with such organizations unions or join unions created by them, whilst retaining its autonomy and legal entity status;
 - 5) In accordance with the procedure stipulated by its By-Laws, create separated subdivisions—branches, representation offices, and institutions; and
 - 6) Create commercial organizations or become a participant in such organizations.
2. Other rights of the organization may be prescribed by law, as well.”

Article 15, too, clearly and unambiguously defines the rights of non-governmental organizations. Such rights may not be construed broadly. Additional rights may be prescribed only by law. Neither the Law on Non-Governmental Organizations nor any other law of the Republic of Armenia stipulates the right of non-governmental organizations to seek judicial protection with any or abstract demands. Moreover, such a right is directly restricted by the Administrative Procedure Code of the Republic of Armenia.

Paragraph 3 of Article 9 of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter “the Aarhus Convention”), which is effective for the Republic of Armenia as from 1 October 2001, provides:

“In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”

Paragraph 1 of Article 19 of the Constitution of the Republic of Armenia provides:

“Everyone shall have a right to restore his violated rights, and to reveal the grounds of the charge against him in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent and impartial court within reasonable time.”

This constitutional provision gives the right to “a fair public hearing of one’s case by an independent and impartial court within a reasonable time” to persons whose rights have been violated. The rights of the non-governmental organizations that act as the plaintiff in the claim have not been violated or even touched by the

challenged demands; moreover. The submitted claim contains no justification of how or by what the rights of the non-governmental organizations that act as the plaintiff have been violated.

Based on the foregoing and guided by Article 35(1) of the Judicial Code of the Republic of Armenia, Articles 76 and 79 of the Administrative Procedure Code of the Republic of Armenia, and Articles 130-132 of the Civil Procedure Code of the Republic of Armenia, the court, and Article 144 of the Civil Procedure Code of the Republic of Armenia, the Administrative Court of the Republic of Armenia hereby

DECIDES

To deny admission of the claim filed by the Transparency International Anti-Corruption Center NGO, the Helsinki Citizens' Assembly Vanadzor Office NGO, and the Environmental NGO Ekodar against the Republic of Armenia Government, the Republic of Armenia Ministry of Environmental Protection, the Republic of Armenia Ministry of Energy and Natural Resources, and a third party—the “Armenia Copper Program” closed joint-stock company, demanding:

This decision shall enter into legal force when rendered.

This decision may be appealed to the Administrative Court of the Republic of Armenia (address: 23 G. Njdeh, Yerevan, 0026) within a five-day period of receiving it.

[Signature of judge A. Mirzoyan; seal]

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