

REPUBLIC OF ARMENIA
CASSATION COURT

Judgment of the Administrative Court of the Republic of Armenia
Administrative case VD/3275/05/09 of 2011
Presiding judge: A. Mirzoyan

DECISION
IN THE NAME OF THE REPUBLIC OF ARMENIA

The Civil and Administrative Chamber of the Cassation Court of the Republic of Armenia
(hereinafter “the Cassation Court”)

Presided by Y. KHUNDKARYAN
Participating judges S. ANTONYAN
V. ABELYAN
V. AVANESYAN
A. BARSEGHYAN
M. DRMEYAN
G. HAKOBYAN
E. HAYRIYAN
T. PETROSYAN
Y. SOGHOMONYAN

On 1 April 2011,

Having examined in a public court hearing the cassation complaint of the environmental non-governmental organization “Ekodar” (hereinafter, “the Organization”) against the judgment of the Administrative Court of the Republic of Armenia dated 24 March 2010 concerning the Organization’s claim against the Government of the Republic of Armenia, the Ministry of Nature Protection of the Republic of Armenia, the Energy and Natural Resources Ministry of the Republic of Armenia, and a third party, the “Armenia Copper Program” CJSC, claiming:

- To nullify license number HV-MSH-13/33 issued to the “Armenia Copper Program” CJSC on 8 February 2001 to exploit the Teghut Mine;
- To annul the Environmental Impact Assessment positive opinion number BP-31 approved by the Minister of Nature Protection of the Republic of Armenia on 3 April 2006, the Environmental Impact Assessment positive opinion number BP-135 approved by the Minister of Nature Protection of the Republic of Armenia on 7 November 2006, and the Republic of Armenia Government decision number 1278-N dated 1 November 2007 “On Changing the Designated Purpose of Lands for Implementing the Teghut Copper and Molybdenum Mine Operation Plan and Allocating Land Plots”;
- To invalidate special license number HV-L -14/90 issued to the “Armenia Copper Program” CJSC on 23 March 2004 for mining the Teghut Copper and Molybdenum Mine, License Agreement number 316 on Subsoil Use for Mining Purposes concluded on 9 October 2007 between the “Armenia Copper Program” CJSC and the Republic of Armenia Ministry of Trade and Economic Development and Ministry of Nature Protection, special license number 21 issued to the “Armenia Copper Program” CJSC on 29 December 2005 for prospecting the subsoil for mining, license agreement number 140 dated 4 May 2006 between the “Armenia Copper Program” CJSC and the Republic of Armenia Ministry of Nature Protection “On Prospecting the Subsoil for Mining,” and the Concept Paper of the Teghut

Copper and Molybdenum Mine Operation Plan adopted in the 30 September 2005 session of the inter-agency committee coordinating the activities of support to the Teghut Mine Development Program; and

- To obligate the respondents to prohibit the “Armenia Copper Program” CJSC from carrying out activities contemplated by the Teghut Mine Operation Plan,

FOUND

1. Procedural History of the Case

The “Transparency International Anti-Corruption Center,” the “Helsinki Citizens’ Assembly Vanadzor Office,” and the environmental non-governmental organization “Ekodar” have filed a court claim against the Government of the Republic of Armenia, the Ministry of Nature Protection of the Republic of Armenia, the Energy and Natural Resources Ministry of the Republic of Armenia, and a third party, the “Armenia Copper Program” CJSC, claiming:

- To nullify license number HV-MSH-13/33 issued to the “Armenia Copper Program” CJSC on 8 February 2001 to exploit the Teghut Mine;
- To annul the Environmental Impact Assessment positive opinion number BP-31 approved by the Minister of Nature Protection of the Republic of Armenia on 3 April 2006, the Environmental Impact Assessment positive opinion number BP-135 approved by the Minister of Nature Protection of the Republic of Armenia on 7 November 2006, and the Republic of Armenia Government decision number 1278-N dated 1 November 2007 “On Changing the Designated Purpose of Lands for Implementing the Teghut Copper and Molybdenum Mine Operation Plan and Allocating Land Plots”;
- To invalidate special license number HV-L -14/90 issued to the “Armenia Copper Program” CJSC on 23 March 2004 for mining the Teghut Copper and Molybdenum Mine, License Agreement number 316 on Subsoil Use for Mining Purposes concluded on 9 October 2007 between the “Armenia Copper Program” CJSC and the Republic of Armenia Ministry of Trade and Economic Development and Ministry of Nature Protection, special license number 21 issued to the “Armenia Copper Program” CJSC on 29 December 2005 for prospecting the subsoil for mining, license agreement number 140 dated 4 May 2006 between the “Armenia Copper Program” CJSC and the Republic of Armenia Ministry of Nature Protection “On Prospecting the Subsoil for Mining,” and the Concept Paper of the Teghut Copper and Molybdenum Mine Operation Plan adopted in the 30 September 2005 session of the inter-agency committee coordinating the activities of support to the Teghut Mine Development Program; and
- To obligate the respondents to prohibit the “Armenia Copper Program” CJSC from carrying out activities contemplated by the Teghut Mine Operation Plan.

The Administrative Court of the Republic of Armenia declined the admissibility of the claim by a decision dated 9 July 2009.

A complaint against the 9 July 2009 decision of the Administrative Court of the Republic of Armenia was lodged by the “Transparency International Anti-Corruption Center” and the Organization, in which they demanded quashing the said decision.

The complaint of the Organization and the “Transparency International Anti-Corruption Center” against the 9 July 2009 decision of the Administrative Court of the Republic of Armenia was rejected by the 28 July 2009 decision of the Administrative Court of the Republic of Armenia.

The cassation complaint of the Organization and the “Transparency International Anti-Corruption Center” was partially granted by a 30 October 2009 decision of the Cassation Court of the Republic of Armenia: in particular, the part of the 28 July 2009 of the Administrative Court on rejecting the complaint of the Organization was quashed and changed, i.e. the complaint of the Organization was granted. The part of the decision concerning the rejection of the complaint of the “Transparency International Anti-Corruption Center” was upheld.

The claim of the Organization was rejected by the 24 March 2010 judgment of the Administrative Court of the Republic of Armenia (hereinafter, "the Court").

In the present case, the cassation complaint has been lodged by the Organization. No response to the cassation complaint has been filed.

2. Grounds, Justifications, and Claim in the Cassation Complaint

The present cassation complaint is examined within the scope of the following basis, with the following justifications:

The court has violated Article 92 of the Constitution of the Republic of Armenia, wrongly interpreted Paragraph 1(3) of Article 15 of the Republic of Armenia Law on Non-Governmental Organizations and 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").

The complainant has supported this claim with the following arguments.

In its decision dated 30 October 2009, the Cassation Court has analyzed Paragraph 1 of Article 3 and Paragraph 1(3) of Article 15 of the Republic of Armenia Law on Non-Governmental Organizations, and Paragraphs 4 and 5 of Article 2 and Paragraph 3 of Article 9 of the Aarhus Convention, and has come to the conclusion that, for purposes of the Aarhus Convention, the Organization is considered "the public concerned" and, as such, is entitled to judicial protection in a matter concerning the protection of the environment, deriving from the statutory objectives of that organization.

Whereas, the Court, having neglected the interpretation of the aforementioned rules by the Cassation Court, has interpreted the same rules in the same case in an opposite manner and has found that the challenged acts do not touch upon the rights and lawful interests of the Organization.

The Court has failed to take into account the fact that non-governmental organizations not only are called to defend their and their members' interests, but also are created to defend their and others' rights and interests, to provide tangible and intangible support to society and certain groups thereof and to carry out other activities beneficial for the public. In other words, the Organization is, for purposes of the Aarhus Convention, the "the public concerned" and corresponds to all the requirements of the national legislation.

Thus, the challenged judgment directly contradicts the 30 October 2009 decision of the Cassation Court in the same case.

Based on the foregoing, the complainant has demanded quashing the 24 March 2010 judgment of the Court and referring the case to new trial.

3. Relevant Facts for the Examination of the Cassation Complaint

The following facts are relevant for the examination of the cassation complaint:

1) The Administrative Court of the Republic of Armenia decided on 9 July 2009 to decline the admissibility of the claim by "Transparency International Anti-Corruption Center," the "Helsinki Citizens' Assembly Vanadzor Office," and the environmental non-governmental organization "Ekodar" on the ground that they obviously did not have standing to file such a claim to court, because the challenged claims had not violated or otherwise affected the rights of these non-governmental organizations (Volume 1, case number 114-117).

2) The Administrative Court of the Republic of Armenia decided on 28 July 2009 to reject the appeal of the Organization and the "Transparency International Anti-Corruption Center" non-governmental organization against the 9 July 2009 decision of the Administrative Court on the same ground (Volume 1, number 154-157).

3) The Cassation court decided on 30 October 2009 to partially grant the cassation complaint of the Organization and the "Transparency International Anti-Corruption Center" non-governmental organization and changed the part of the 28 July 2009 decision of the Administrative Court on declining the Organization's complaint, deciding to grant the latter. The part of the decision on declining the complaint by the "Transparency International Anti-Corruption Center" non-governmental organization was upheld (Volume 6, case number 32).

4) By its judgment dated 24 March 2010, the Court rejected the Organization's claim on the ground that Article 15 of the Republic of Armenia Law on Non-Governmental

Organizations and Paragraph 3 of Article 9 of the Aarhus Convention did not grant non-governmental organizations capacity to act in court (Volume 6, case number 130-143).

4. Reasoning and Conclusion of the Cassation Court

Having examined the cassation complaint within the scope of the aforementioned basis, the Cassation Court hereby finds it unfounded, on the following grounds.

Paragraph 1(3) of Article 15 of the Republic of Armenia Law on Non-Governmental Organizations provides that, for achieving the objectives mentioned in its by-laws, an organization may in accordance with the procedure defined by law represent and defend its and its members' rights and lawful interests in other organizations, courts, and state government and local self-government bodies.

Paragraph 1 of Article 3 of the Administrative Procedure Code of the Republic of Armenia provides that each natural person or legal entity may apply to the administrative court in accordance with the procedure stipulated by this Code, if it believes that the administrative acts, actions, or inaction of state government and local self-government bodies or their officials:

- 1) Have violated or may directly violate its rights and freedoms under the Republic of Armenia Constitution, international treaties, laws, and other legal acts, including:
 - a. Obstacles posed to the exercise of such rights and freedoms; or
 - b. Failure to provide the necessary conditions for the exercise of such rights, which had to have been provided under the Republic of Armenia Constitution, international treaties, laws, or other legal acts;
- 2) Have illegitimately imposed obligations on them; or
- 3) Have illegitimately imposed an administrative sanction on them.

The Cassation court decided on 30 October 2009 to partially grant the cassation complaint of the Organization and the "Transparency International Anti-Corruption Center" non-governmental organization and changed the part of the 28 July 2009 decision of the Administrative Court on declining the Organization's complaint, deciding to grant the latter. In the same decision, the Cassation Court found that the decision of the Court to decline the admissibility of the claim of the environmental non-governmental organization "Ekodar" on the basis of the application of Paragraph 1(3) of Article 15 of the Republic of Armenia Law on Non-Governmental Organization was groundless.

In its decision number SDO-906 dated 7 September 2010, the Constitutional Court of the Republic of Armenia examined the applicant's claim that Article 19 of the Constitution of the Republic of Armenia contemplates a wider circle of entities that have standing to apply to court than the entities whose rights have been violated directly, and that, consequently, the word "its" after the words "directly violate" in Paragraph 1(1) of Article 3 of the Administrative Procedure Code of the Republic of Armenia contradicts the Constitution of the Republic of Armenia. In its decision, the Constitutional Court of the Republic of Armenia found that the word "its" after the words "directly violate" in Paragraph 1(1) of Article 3 of the Administrative Procedure Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia.

It flows from the foregoing that the legislation of the Republic of Armenia is based on the logic that the effective protection of violated rights includes, among others, the right to apply to court for entities whose rights have been directly violated.

Based on the foregoing and taking into account the fact that the legislation of the Republic of Armenia contemplates the right to apply to court only for entities whose rights have been directly violated by the challenged act, action, or inaction, the Cassation Court hereby finds that the challenged judicial act is well-founded and in conformity with the regulatory objectives of the legislation of the Republic of Armenia.

Based on the foregoing, and on the basis of Paragraph 4 of Article 21 of the Republic of Armenia Law on Amending and Supplementing the Administrative Procedure Code of the Republic of Armenia (Law HO-135-N adopted on 28 October 2010), Articles 118 and 118.3 of the Administrative Procedure Code of the Republic of Armenia, and Articles 240-241.2 of the Civil Procedure Code of the Republic of Armenia, the Cassation Court hereby

DECIDES

1. To reject the cassation complaint, and to uphold the 24 March 2010 judgment of the Administrative Court of the Republic of Armenia.

2. When published, this decision shall enter into legal force, be final, and not be subject to an appeal.

Presided by Y. KHUNDKARYAN
Participating judges S. ANTONYAN
V. ABELYAN
V. AVANESYAN
A. BARSEGHYAN
M. DRMEYAN
G. HAKOBYAN
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