

REPUBLIC OF ARMENIA  
CASSATION COURT

Decision of the Administrative Court of the Republic of Armenia  
Administrative case number VD/3275/05/08  
Presiding judge: A. Arakelyan  
Judges: K. Matevosyan  
K. Baghdasaryan

Administrative case VD/3275/05/08  
2009

DECISION

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

Presiding judge: S. Sargsyan  
Sitting judges: S. Antonyan  
V. Abelyan  
A. Barseghyan  
M. Drmeyeran  
E. Khundkaryan  
T. Petrosyan  
E. Soghomonyan

On 30 October 2009,

Having examined the cassation complaint of the "Transparency International Anti-Corruption Center" non-governmental organization and the "Ekodar" environmental non-governmental organization against the 28 July 2009 Decision of the Administrative Court of the Republic of Armenia "On Rejecting the Appeal,"

FOUND

1. Substance of the Judicial Act Rendered in 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 (hereinafter, “the Court”).

In the present case, a cassation complaint has been lodged by the “Transparency International Anti-Corruption Center” non-governmental organization and the environmental non-governmental organization “Ekodar.”

A response to the cassation complaint has not been presented.

## 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 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.*

The Court found that the plaintiffs could not present the said claims to court, because the challenged acts did not touch upon their rights and lawful interests, and 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.

Besides, the plaintiffs are, for purposes of the Aarhus Convention, the “the public concerned” and correspond to all the requirements of the national legislation.

Based on the foregoing, the persons that lodged the cassation complaint have demanded to quash the 28 July 2009 decision of the Court.

## 3. 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 partially founded, on the following grounds.*

According to Paragraph 3 of Article 9 of the Aarhus Convention, 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.

According to Paragraph 4 of Article 2 of the Aarhus Convention, “the public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups. According to Paragraph 5 of Article 2 of the Aarhus Convention, “the public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

It flows from the foregoing that, for purposes of Paragraph 5 of Article 2 of the Aarhus Convention,

acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment under Paragraph 3 of Article 9 of the same Convention may be challenged in administrative or judicial procedures by non-governmental organizations that:

1. Meet the criteria laid down in the national law; and
2. Are engaged in matters related to the protection of the environment.

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.

Paragraph 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.”

Paragraph 1(3) of Article 15 of the same Law 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.

According to Paragraph 2 of the by-laws of the “Ekodar” environmental non-governmental organization, which is present in this case, the aim of the organization is to contribute with effective participation **to the formation and implementation of a holistic ecological policy for improving the ecological situation in Armenia**. The objectives of the organization are:

To respond to urgent and primary ecological issues and to take adequate measures for resolving them;

- a) To support the processes of ensuring access to information in matters related to the environment and human rights;
- b) To promote the development and implementation of recommendations on the preservation and development of the atmosphere, water resources, precious agricultural land, monuments of nature, green areas, and forests near cities.

According to Paragraph 2 of the by-laws of the “Transparency International Anti-Corruption Center” non-governmental organization, the aim of the organization is to facilitate effective public policy and administration in Armenia for reducing corruption and strengthening democracy. The objectives of the organization are:

- a) To contribute to the creation of a favorable environment for political, economic, and social reforms;
- b) To facilitate the development of a transparent and accountable system of governance;
- c) To promote the democratic process, including the protection of human rights and public participation in governance.

In the present case, the Court rejected the plaintiffs’ appeal against the refusal of the Administrative Court to admit the claim in the basis that the plaintiffs obviously did not have a right to file the claim, because the challenged acts had neither touched upon nor violated the rights of those non-governmental organizations. The Cassation Court finds that the “Ekodar”

environmental non-governmental organization is a non-governmental organization registered in accordance with the procedure stipulated by the Republic of Armenia Law on Non-Governmental Organizations, meets the criteria laid down in the national law, and based on the aim and objectives stipulated by the by-laws, is engaged in matters of environmental protection.

Based on the foregoing, the Cassation Court hereby finds that the “Ekodar” environmental non-governmental organization is a non-governmental organization is a “concerned” organization in the present case for purposes of the Aarhus Convention, and therefore, it enjoys the right to seek judicial protection in a matter related to environmental protection, which flows from the aims stated in the by-laws of the organization.

Under these circumstances, it would be groundless for the Court to refuse to admit the application by the “Ekodar” environmental non-governmental organization on the basis of the application of Paragraph 1(3) of the Republic of Armenia Law on Non-Governmental Organizations.

As to the right of the “Transparency International Anti-Corruption Center” non-governmental organization to file an application in the present case, the Cassation Court finds that part of the cassation complaint groundless due to the following reasons.

Under Article 52 of the Civil Code of the Republic of Armenia, a legal entity may have civil rights *in accordance with the objectives of the activities stipulated by its incorporation documents* and bear obligations related to such activities.

Whereas, it does not transpire from the aim and objectives stated in the by-laws of the “Transparency International Anti-Corruption Center” non-governmental organization that the activities of latter are about the protection of the environment.

Therefore, the Cassation Court finds that, for purposes of the Aarhus Convention, the “Transparency International Anti-Corruption Center” non-governmental organization does not 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.

Thus, the Cassation Court finds a sufficient basis in the cassation complaint, according to Articles 227 and 228 of the Civil Procedure Code of the Republic of Armenia, for quashing the Court’s decision in respect of the “Ekodar” environmental non-governmental organization.

Based on the foregoing and following Articles 240 and 241.1 of the Civil Procedure Code of the Republic of Armenia, the Cassation Court hereby

## DECIDES

1. To partially grant the cassation complaint: to quash the part of the 28 July 2009 decision of the Administrative Court on rejecting the appeal of the “Ekodar” environmental non-governmental organization and to change it to grant the appeal of the “Ekodar” environmental non-governmental organization; to uphold the part of the 28 July 2009 decision of the Administrative Court on rejecting the appeal of the “Transparency International Anti-Corruption Center” non-governmental organization.

2. This decision is final when rendered and shall not be subject to an appeal.

Presiding judge:

Judges:

S. SARGSYAN

A. ANTONYAN

V. ABELYAN

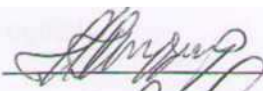
A. BARSEGHYAN


M. DRMEYAN

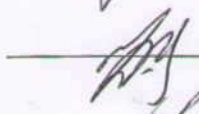
E. KHUNDKARYAN


T. PETROSYAN


E. SOGHOMONYAN


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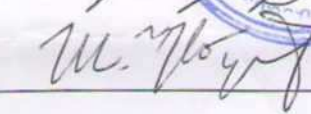
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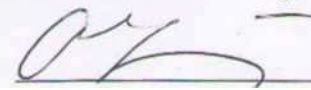
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