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“ECOLOGICAL RIGHT”

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ENVIRONMENTAL

ՀԱՍԱՐԱԿԱԿԱՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆ

NON-GOVERNMENTAL ORGANIZATION

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## Answer to the questions on the Communication ACCC/C/2016/138 on the Compliance by Armenia

Hereby, the “Ecological Right” non-governmental organization presents its answers to the questions of the Compliance Committee presented in 14 October 2019 concerning the Communication ACCC/C/2016/138 on the Compliance by Armenia.

### Questions to both parties:

1. What is the current status of the mining license for the Amulsar open-pit mine?

*Answer: Legally the license (exploitation permit) is in force.*

2. Following the positive expertise conclusions of the Sevan Lake Commission of 24 September 2014, and of the Ministry of Nature Protection of 17 October 2014, what, if any, other permits were or will be needed prior to commencing extractive activities at the Amulsar open-pit mine?

*Answer: Currently, all necessary documents are given to exploit the Amulsar open-pit mine. No other document is required to launch the exploitation.*

*In accordance with the Article 54 Par. 3 of the Mining Code of Armenia, the mining right is consisted of four documents: 1) mining permit, 2) mining contract, 3) land allocation act and 4) mining project, which acquired all the correspondent expert conclusions. In its turn, Article 7 Par. 1 of Mining Code stipulates that the mining project shall pass three types of expertise: 1) geological expertise, 2) environmental impact expertise (expertise of liable state body on the so called OVOS, which is developed by the company and presented for state environmental expertise), 3) technical security expertise. Therefore, the mining permit can be granted only if the mining project received positive conclusions on all three expert assessments. Separately, Article 25 of the Law on Lake Sevan requires that business entities are committed to present the corresponding declaration to the liable body*

*before starting the economic activity or changes of the technology. As it is described in the communication, within a month the liable body adopts the decision on permission or denial of the economic activity, based on the results of expertise implemented in line with the legislation. In case of industrial activities around the Lake Sevan water catchment basin case, the liable body is the Sevan Lake Commission within the National Academy of Science of Armenia.*

*Therefore, the EIA expert conclusion and separately the Sevan Lake Commission expert conclusion the necessary documents to receive mining permit. Two other expert conclusions: geological and technical security expertise have no environmental elements. The Mining Code forbids to conduct the mining activity without the mining project, which properly exposed required state expertise. Moreover, mining permit can-not be granted if any of mentioned expert conclusions are negative.*

3. What, if any, opportunities existed or still exist for the communicant to challenge the further permits identified in your answer to question 2 above?

*Answer: As it is justified in the answer 2 above, all necessary documents, which composes the mining right to start the exploitation are granted. There is no required further permit to challenge it in the court or elsewhere.*

4. What would have been the legal effect, if any, if the Sevan Lake Commission had issued a negative conclusion regarding the impact of the Amulsar open-pit mine on the Sevan Lake?

*Answer: As it is derived from the Law on Lake Sevan, in this case the mining permit must be denied.*

5. Please specify the legal basis through which the Sevan Lake Commission was established and its mandate, including the text of the relevant provisions of the law of the Party concerned.

*Answer: In line with the liabilities given by the Article 25 of the Law on Lake Sevan indicated above, the Article 19 Par. 1 of the same law defines that the mentioned Commission is established within the structure of the National Academy of Science to implement the specific professional expertise of the Complex and Annual projects for the protection of the Lake Sevan. Article 19 Par. 6 envisages that expenditures of the Commission will be covered by the state budget, including the salaries of the members of Commission. Moreover, according to the Article 3 Par. 1 of the Law on the national Academy of Science of the Republic of Armenia, the “Academy is the highest scientific organization with the special status, which organizes, implements and coordinates the fundamental and implementing studies necessary for the economic, social and cultural development.” Article 4 Par. 1 of the same law declares that the Academy is directly under the liabilities of the Government. Hence, the Academy is the state body with state financing. The scope of its mandate is protection of Lake Sevan and the methods for implementation of this mandate are complex and annual conclusions on general issues of the lake, as well as expert conclusions on specific industrial projects, which might have impact on the ecosystem of the lake.*

6. Please clarify whether the “liable body” under article 25 of the Law on Sevan Lake is a “public authority” within the meaning of article 2(2) of the Convention. Please provide reasons for your answer.

*Answer: The Lake Sevan Commission is a “public authority” under the Article 2(2) of the Convention, as the Commission is considered to be the state body, which gives expert conclusions on specific issues, which concern the impact on the Lake Sevan ecosystem. The expert conclusion has the same legal force as all other expert conclusions, that are generally required to grant a permit in line with the Mining Code. Thus, the expert conclusion of the Lake Sevan Commission is a part of the required documents to grant the mining right in this specific mining project, as it is located in the Sevan Lake water catchment basin and falls under the regulatory framework of the Law on Lake Sevan. Otherwise, there was no sense to involve this Commission in the process permitting.*

**Question to the communicant:**

7. At pages 6 and 8 of your communication, you allege noncompliance with article 9(3) in conjunction with “article 2(3)(1)”. However, at pages 8 and 9 of your communication, you discuss article 9(3) in conjunction with “article 3(1)” of the Convention.

Please note that there is no “article 2(3)(1)” in the Convention.

Accordingly, please clarify whether you are alleging noncompliance with article 9(3) in conjunction with article 2(3)(a), or in conjunction with article 3(1) of the Convention.

*Answer: Please, take into account the noncompliance with article 9(3) in conjunction with article 3(1) of the Convention. Indication of article 2(3)(1) is a result of technical mistyping.*



Sincerely,

*Armen Grigoryan*

*Chairperson of “Ecological Right” Non-Governmental Organization*