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"ECOLOGICAL RIGHT"
ENVIRONMENTAL
NON-GOVERNMENTAL ORGANIZATION

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Comments on the Communication ACCC/C/2016/138 on the Compliance by Armenia

Hereby, the "Ecological Right" non-governmental organization presents its comments and justifications on non-compliance, pursuant to the response presented by the Party concerned to the Communication ACCC/C/2016/138 on the Compliance by Armenia.

- ***Article 9 par. 2 in conjunction with article 6 par. 2 (c)***
- ***Article 9 par. 2 in conjunction with article 2 par. 2 (a)***
- ***Article 9 par. 3 in conjunction with article 2 par. 2 (b)***

In its response addressed to the Compliance Committee, the Party Concerned indicated that, *"Expertise procedure is implemented by the specially created state body and for the decisions made by that body is responsible the authorized state officials. In practical the latter's decision can have foreclosing meaning for final decision made by the state body … Without expertise positive conclusion the main document's acceptance and the implementation of the intended activity is forbidden."*

In fact, the Communication launched by the "Ecological Right" NGO is based on the same position with regard to the role of state environmental expert body and obligatory status of its conclusion in the process of permitting of an environmentally sound activity. However, the Administrative Court of Armenia found that the position of indicated state environmental expertise stated in its expert conclusion is not obligatory and can be the subject for dispute as an "opinion of experts." The legal status of the mentioned "expert opinion" is considered to be discussed as evidence during the litigation process, which is a matter of dispute in line with other similar opinions. Having in mind that Armenian

legislation does not foresee any other liable body for environmental decision-making, the ruling of Administrative Court is not in compliance with Article 9 par. 2 in conjunction with article 6 par. 8, as it annuls the position of state environmental expertise as "final decision made by the state body with foreclosing meaning."

With regard to the expert conclusion of the Sevan Lace Expert Commission, the Party Concerned stated position that it is not obligatory for decision-makers, and does not have foreclosing meaning and is an advisory document. Here we just need to refer to the article 25 of the Law on Lake Sevan, attaché to the communication, which constitutes that, *"Business entities are committed to present the corresponding declaration to the liable body before starting the economic activity or changes of the technology. 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."*
Sevan Lake Protection Expert Commission adopts the **decisions** on permissibility of an activity concerning the impact of the activity on Lake Sevan in particular. To this end, the legal status of the Sevan Lace Expert Commission corresponds the definition of a body presented in article 2 par. 2 (b) of the Convention.

- ***Article 9 par. 2 in conjunction with article 6 par. 8***

Similarly, the position of the Party Concerned in relation to the legal procedure of EIA and procedure of taking into account of public comments is also in line with the position of Communicant. In particular, the Party Concerned noted that, *"According to the legislation of RA, public discussions considered as an inseparable part of the process of expertise and are reflected in the conclusion of expertise. Therefore legitimacy of the conclusion of expertise, as a document which reflects the results of public participation, is important in the context of compliance with the provisions of the Aarhus convention … notwithstanding the status of expertise conclusions (whether they are administrative acts or have other legal status), they, as a document which reflects public participation results and which is fully included in the framework of Article 6 of Aarhus Convention, should be subject to review by Court or other independent and impartial body in the framework of access to justice, which is in compliance with Convention."*

However, the compliance of regulatory framework of the Party Concerned does not ensure the lawfulness and compliance of judicial practice to the Convention. Therefore, all provisions on non-compliance are in conjunction with Article 9 of the Convention concerning the right to Access to Justice. The communicant did not have opportunity to litigate the matters of non-compliance of state liable bodies and address the alleged infringements of legislation in the court, which is the core substance of current Communication.

The Communication on Compliance raised the issue of rejection to discuss the fact of properly conducted EIA in the court, as the Communicant found that results of public hearings were not

reflected in the adopted expert conclusion without any justification. Actually, the "Ecological Right" non-governmental organization and other plaintiffs were unlawfully rejected to present their position on legality of EIA and expert conclusion in a judicial procedure, which is a non-compliance with the provisions of the Convention.

Conclusion

We find that the position of the Party Concerned in relation with the Administrative Court's ruling is summarized in the following section of the response to the Communication: *"RA legislation ensures the judicial review of expertise conclusion in the framework of judicial review of granted permit. Assessment of expertise conclusion as a proof in court, is the mechanism through which the state ensures the review of its lawfulness … Taking into consideration that expertise conclusion is connected with the permit (license), the litigation of expertise conclusion with final decision will be more effective."*

Supposedly, the Party Concerned finds that the right to Access to Justice of plaintiffs is in line with the Convention, as the court will continue the trial where the EIA expert conclusions will be presented as evidences but not administrative decisions. Nevertheless, this judicial practice contains principal non-compliance with both the Convention and the national legislation itself because it means that no liable state body is responsible for conducting the EIA and subsequent awarding of the environmental permit, in correspondence with the requirements of the Convention. The judicial practice finds that EIA expert conclusion, which is treated to be the result of properly proceeded EIA is just an opinion of some specialists but not the document, which is the ground for the permit, and it can be disputed in the judicial proceeding in line with others.

Even though the Communication is based on the non-compliance of judicial practice rather than the legislation, we do not share the conclusion of the Party Concerned that Armenian legislation is in compliance with Aarhus Convention requirements and obligations taken under the Convention. In any case, the judiciary is based on the legislation and in the process of Communication there may be revealed gaps and shortcomings of the legislation as well.

Therefore we confirm the non-compliance of all provisions presented in the Communication with the Aarhus Convention.

Sincerely,

Artur Grigoryan

Chairperson of "Ecological Right" Non-Governmental Organization