

2012-10-12

Case Summary posted by the Task Force on Access to Justice

Armenia: Teghout mine case

1. Key issue	Standing for a non-governmental organization – The Cassation Court of Armenia in 2009 stated that Ecoera, environmental non-governmental organization, has access to justice before the court in public environmental litigations. However, in decision dated 2011, the court revised its position finding that the non-governmental organization did not have standing.
2. Country/Region	Armenia
3. Court/body	Cassation Court of Armenia (ՀՀ Վճռաբեկ դատարան)
4. Date of judgment/ decision	2009-10-30 and 2011-04-01 respectively
5. Internal reference	ՀՀ վճռաբեկ դատարանի որոշում: Ք. Երևան, 30 հոկտեմբերի 2009 թվական, 01 ապրիլի 2011 թվական, ՎՊ/3275/05/09,
6. Articles of the Aarhus Convention	Art 2, paras. 4 and 5, and art. 9, paras. 2 and 3
7. Key words	Access to justice, legal standing, sufficient interest, legal interest, impairment of right, public interest protection, non-governmental organization, abstract claim

8. Case summary

Case summary No 1 (30 October 2009)

Three non-governmental organizations – Transparency International Anti-Corruption Center, Ekoera and Helsinki Citizen's Assembly Vanadzor Office – brought a case before the Administrative Court of Armenia challenging the lawfulness of the administrative acts permitting the extraction of copper-molybdenum in the region of Teghout. The Administrative Court dismissed the appeal, referring to the articles 3 and 79 of the Administrative Procedure Code of Armenia. The mentioned articles stipulate that the legal and natural entities are deemed to have access to justice if the administrative actions, omissions and acts infringe or may directly infringe their rights and legitimate interests.

Appealing the decision to the Cassation Court of Armenia, the "Transparency International Anti-Corruption Center and "Ekoera" NGOs requested the court to reverse the decision based on the article 9 of Aarhus Convention, which is a constituent part of the legal system of Armenia by virtue of article 6 of Armenia's Constitution. The Cassation Court stated that Ecoera NGO is an entity established in accordance with the Armenian Law on Non-Governmental Organizations and meets the requirements of national law and promotes environmental protection based on mission and objectives stated in its charter. Thus, the Court found that Ecoera NGO possess the right to access to justice before the courts in environmental matters. However, the Court also found that the NGO Transparency International Anti-Corruption Center had no sufficient interest in the case and therefore had no access to justice for public environmental interest protection. Based on the aforementioned decision, the Administrative Court was obliged to review the substantive matters of the case.

Case summary No 2 (1 April 2011)

By the judgment dated 24 March 2010, the Administrative Court of Armenia reaffirmed its position on standing of Ecoera NGO, according to which natural and legal entities cannot claim protection of “any or abstract right” in the court. Once again, the claim of the environmental NGO was dismissed. Being dissatisfied with this, Ecoera NGO again brought an appeal before the Cassation Court of Armenia.

However, the Cassation Court in its Decision from 01 April, 2011 stated the following:

“... In its Decision N 906, the Constitutional Court of Armenia reviewing the constitutionality of the word “his/her/its” after the notion “infringed” article 3, paragraph 1, of the Administrative Procedure Code of Armenia found the provision to be in compliance with the Armenian Constitution. From the logic of Armenian legislation, it follows that the effective protection of violated rights includes, among others, the rights to apply to court for entities whose rights have been directly violated.”

Based on the conclusion of the Constitutional Court, and with regard to the relevant provisions of the Armenian Administrative Procedure Code and the Armenian Civil Procedure Code, the Cassation Court rejected the cassation complaint and upheld the judgment of the Administrative Court of Armenia dated 24 March 2010.

Note: Ecoera NGO filed communication (ACCC/C/2012/62) to the Aarhus Convention Compliance Committee which is currently under consideration.

For more information:

<http://www.unece.org/env/pp/compliance/compliancecommittee/62tablearm.html>

*9. Link to judgement/
decision*

Case 1:

http://datalex.am/dl_case_view_page.php?caseType=5&courtID=0&caseID=38562071809420633 (in Armenian)

Case 2:

http://datalex.am/dl_case_view_page.php?caseType=5&courtID=0&caseID=38562071809420633 (in Armenian)

The English translations are enclosed below.

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. Drmeyan

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:

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,

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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 240-2412 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
E. HAYRIYAN
T. PETROSYAN
Y. SOGHOM