Considerations on Communication ACCC/C/2009/43 sent by Armenia to Compliance Committee of Aarhus Convention

On 8 July, 2009 "Transparency International anti-corruption Centre" NGO, "Helsinki Citizens' Assembly of Vanadzor" NGO, "Ecoera" environmental NGO submitted a lawsuit to Administrative Court of the Republic of Armenia to challenge a range of decisions of executive bodies related to Teghut deposit exploitation by recognizing them void and/or ceased. The Administrative Court of RA in its decision from July 9, 2009 rejected the acceptance of the application referring to Art. 3 paragraph 1 of Administrative Procedure Code of RA and Art. 15 paragraph 1 of the RA Law "On Non-governmental organizations". According to Art. 3 paragraph 1 of Administrative Procedural Code of RA:

1. Any natural or legal person has the right to apply to Administrative Court in the manner prescribed in this code if he/she considers that administrative acts, actions or inactivity of state and local administration

1) have violated or can directly violate his/her rights and freedoms ensured by Constitution of RA, international treaties, laws or other legal acts, if

a. obstacles have been made for realization of these rights and freedoms;

b. conditions necessary for realization of these rights have not been ensured though they should have to be in accordance with the Constitution of RA, international treaties, laws and other legal acts.

2) he/she has been illegally imposed any obligation;

3) he/she has been illegally exposed to administrative liability.

According to Art. 15 paragraph 1 point 3 of the RA Law on "Non-governmental organizations": "For the implementation of its statutory goals, in the manner prescribed by the law, the organization has the right to represent and defend the rights and lawful interests of itself and its members in other organizations, before court, the state and local self-governance bodies".

The Administrative Court in its decision mentioned that the challenged acts did not violate the rights of applicant organizations and touch their interests".

"Transparency International anti-corruption Centre" and "Ecoera" NGOs had submitted a complaint to the Court of Cassation against the decision of Administrative Court on rejection of the application with following justification: "The Administrative Court has incorrectly interpreted Art. 15 paragraph 1 point 3 of RA Law on "Non-governmental organizations" and Art. 9 of Aarhus Convention. Applicants substantiate their demands stating that NGOs' vocation is not only protecting the rights and lawful interests of theirs and their members but also those of others', provide material and non-material support to society and its separate groups, carry out public-oriented activities. Besides, applicants find that according to Aarhus Convention they are considered as "*public concerned"*.

The Court of Cassation of RA having reviewed the complaint in its ruling from October 30, 2009 satisfied the complaint only in part. Having referred to charters of "Ecoera" and "Transparency International anti-corruption Centre" NGOs the Court stated that "Ecoera" NGO is a non-governmental organization registered according to RA Law on "On Non-governmental organizations", meets the requirments of national legislation and based on charter goals and tasks is engaged in nature protection issues and is "concerned organization" in the scope of Aarhus Convention.

Concerning “Transparency International anti-corruption Centre” NGO the Court of Cassation found that it is not a concerned organization in the scope of Aarhus Convention.

According to Art. 52 of Civil Code of RA: “A legal person may have civil rights and corresponding to the purposes of activity provided in its founding document and bear the duties connected with this activity”. Therefore, the Court of Cassation found that “Transparency International anti-corruption Centre” NGO can not be considered as public concerned (in the scope of Aarhus Convention). Meanwhile, charter goals and objectives of “Transparency International anti-corruption Centre” NGO do not show that the character of its activities is environment protection.

Taking into consideration abovementioned, we find the Decision of the Court of Cassation substantiated and justified in the given case. Despite “Transparency International anti-corruption Centre” NGO, as non-governmental organization, in the scope of Art. 2 paragraph 5 of Aarhus Convention is in compliance with general conditions prescribed in national legislation, it is registered in the manner prescribed in RA legislation and is a non-governmental, non-commercial organization. Therefore, based on provisions of national legislation and Aarhus Convention it can not be considered as an organization supporting environment protection as such purpose and tasks are not defined in its charter.

According to Art. 9 paragraph 2a) of Aarhus Convention: “Each Party shall, within the framework of its national legislation, ensure that members of the public concerned having sufficient interest have access to a review procedure before a court of law and/or another independent and impartial body established by law…”. Therefore, in each case the categories *“public concerned”* and *“public having sufficient interest”* should be differenced. At the same time, according to Art 9 paragraph 2 part 2 of Aarhus Convention “What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the objective of giving the public concerned wide access to justice within the scope of this Convention”. According to national legislation the only legal criterion of identification “sufficient interest of the public” is the charter of organization. However, in each certain case the volume of participation of the NGO in the processes should be subject to consideration.

The difference between the decisions of Administrative Court and the Court of Cassation is explained that after changes in Constitution of RA the highest judicial instance acts as guarantee for ensuring unified application of law. Therefore, Court of Cassation of RA has given broader interpretation of RA Law “On Non-governmental organizations” creating base for formation judicial practice when NGOs acting in the field of nature protection are eligible to submit lawsuits to the courts for protection of public interest.

At the same time we believe that RA legislation regulating this field requires further perfection and clarification and newly-formed judicial practice will serve as an orienteer as the current legislation of RA consolidates *restrictive approach* for actio popularis, therefore development of judicial practice is observed to go in the direction of *intermediate approach.*