September 2017

Comment of representative of Armenian environmental NGO “Ecological Right” Artur Grigoryan during the 6th Meeting of the Parties of the Aarhus Convention

On August 30 the Administrative Court of Armenia decided to reject the right to access to justice for the environmental NGOs, which is an absolute non-respect towards the compliance mechanism of Aarhus Convention and the Compliance Committee of the Convention itself.

Obviously, the reputation of the Aarhus Convention depends on the efficiency of its Compliance Mechanism. I entirely understand that Compliance Committee tries to be balanced when applying the measures, and I believe that it is in benefit of implementation of the Convention. At the same time, there shall be a margin of continuing non-compliance after which the reputation of the Convention and its compliance mechanism will be put under suspicion.

It is worth to inform you that some ten years ago seven-eight NGOs from Armenia were the communicants of different cases concerning compliance. Now only one NGO left to follow the implementation process, others have already tired from non-efficiency of this mechanism, at least in relation to Armenia, and we also are looking the alternative effective mechanisms.

I want to remind everyone in this Meeting that the first decision on non-compliance of Armenia with with article 9 of the Aarhus Convention on Access to Justice was adopted by the Compliance Committee in March 2006. In June 2008 the Third Meeting of the Parties confirmed the recommendations and invited Armenian government to present progress in November 2008, 2009 and 2010. Similar recommendations with the similar wording are offered now by the current Meeting of the Parties to be presented in October 2018, 2019 and 2020. Is not it obvious that the adopted mechanism of compliance does not work in relation to such public authorities like Armenian ones?

I don’t want just criticize the efficiency of Compliance Mechanism of the Convention but also suggest to improve it. We believe that individual approach shall be adopted based on specifications of each country to be effective. I want to emphasize that implementation of individual approach is not only my position, yesterday the representative of Switzerland also offered to adopt distinguished approach towards those countries, which endorse the recommendation and imply them and those, which endorse but continuously do not substantively implement them. Respective public authorities of Armenia just pretend constructive dialogue without even thinking about substantive implementation
of the recommendations, which they endorse during each Meeting of the Parties since 2008 manipulating the trust of the Compliance Committee and everyone.

When we ask the Compliance Committee to apply stronger measures, it is not just for self-satisfaction but the practical instrument for civil society to demand the international institutions (UNDP, UNEP, etc.) to suspend and condition their financial support to Armenian government unless the government substantively implements its international commitments adopted by ratification of the Aarhus Convention. We insist that the only effective instrument to affect on behavior of the Armenian public authorities is to bit on their pocket.

As a proof of “constructive dialogue” between Armenian government and the Compliance Committee, the Deputy Minister of Justice of Armenia Arsen Mkrtchyan provided a letter to the Chair of Compliance Committee, Mr. Jonas Ebbesson on 22 July 2016 noting that “… draft law was developed by the Ministry of Justice, according to which the environmental NGOs, with the issues relating to the environment, shall be entitled to apply to court to protect the rights and legitimate interests of its stakeholders. To this end, appropriate changes were made to the Law on Public Organizations and the Administrative Procedure Code of The Republic of Armenia.” It shall be noted that right after the adoption of new legislation the environmental NGOs are found to have no legal standing to litigate the alleged violations of public authorities in relation to environmental matters. As a consequence, three ongoing judicial processes concerning environmental matters will be interrupted by suspending the legal standing of applicant NGOs.

After the final version of new NGO Law was drafted number of Civil Society organizations presented concerns to the Ministry of Justice and the National Assembly of Armenia with request to amend the restrictions presented in draft NGO Law, as it was obvious that via indicated restrictions responsible authorities undermined the ongoing judicial proceedings launched in judicial practice. In November 2016 and May 2017 two communications were presented to the Compliance Committee by “Ecological Right” NGO analyzing the indicated concerns and with the request to apply stronger measures. However, no reaction was received by the Compliance Committee in relation to inadmissibility of suggested measures to be applied.

Moreover, the same deputy minister currently works as a judge in the court. Furthermore, the same judge was leading the process of drafting the final version of the new Law on NGOs when working as a deputy minister. I have no doubt that when sending the letter to Mr. Ebbesson there already been a political decision to stop the pending judicial processes touching the mining companies as the public officials are the beneficial owners of those companies. You should understand the logic of behavior of Armenian public authorities: they just pretend “constructive dialogue” without any intention to substantively realize the recommendations of Compliance Committee or the Meeting of the Parties. Unlike western European countries, where democratic institutions properly work, Armenia still remains as a post soviet country, where public authorities are totally corrupt and the court is not
independent. That is why we need to apply different approach for different countries to make them comply with their international commitments.

Hereby, I call on all members of this Meeting of the Parties to promptly take necessary measures to enforce the civil society of Armenia with instruments for effective actions to urge the government comply with its international commitments envisaged by the Aarhus Convention and other environmental treaties.”