

Twelfth meeting of the Task Force on Access to Justice under the Aarhus Convention

28 February - 1 March 2019

Before speaking on the practice and challenges in access to justice in Armenia regards to the Environmental Matters I would like to remind that the first decision on non-compliance of Armenia 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 provide progress reports annually. Similar recommendations were offered in 2017 at the Sixth session of the Meeting of the Parties in Budva asking for progress reports until 2020.

Unfortunately, I have to inform that no practical steps have been taken to improve the legislation in this regard.

In 2016 the Ministry of Justice of Armenia informed the Compliance Committee that appropriate changes were made to the Law on Public Organizations and the Administrative Procedure Code of The Republic of Armenia, consequently the environmental NGOs with the issues relating to the environment shall be entitled to apply to the court to protect the rights and legitimate interests of its stakeholders. Right after the adoption of new legislation the environmental NGOs were recognized as no legal standing to litigate the supposed violations of public authorities in relation to environmental matters.

The note is that restrictions are indicated in the same law that the applicant organization had participated in public hearings on the matter.

Last year again the Administrative Court decided to reject the right to access justice for the “Ecoright” NGO explaining that it hadn’t attended to all the hearings. The “Ecoright” demanded the court to recognize them as non-legitimate both the endorsement of the Ministry of Nature Protection and the order of the Minister of Energy Infrastructures and Natural Resources of Armenia concerning to the Kajaran mine expansion plan. The NGO had participated in 2 public hearings.

It turns out that legislation hampers access to justice establishing criteria and thereafter the Court tighten it mentioning that the applicant had to attend the all public hearings. The NGO appealed the decision. The case was admitted to proceedings a month ago, but the court hearings were appointed at the end of the year - in November 2019.

About some legislative initiatives; recently the Ministry of Energy Infrastructures and Natural Resources has issued a proposal to make changes in the Decision of Government “On Approving Exemplary Forms of Mining Utility Contracts” “On confirming the exemplary forms of contracts for the use of mineral resources” according to which in case of the mine exploitation the contract shall be amended without the EIA. In particular, it can be a substantial change in the resources.

Last year, with another legislative proposal, an attempt was made to restrict access to environmental information but non-governmental organizations succeeded in stopping that process at an early stage.

In regards to the practical issues; There are currently a number of big mining projects in Armenia. Those can have harmful effects on Environment: land and air pollution.

In some cases, when public wasn't capable to influence the final decision or the courts did not ensure their access to justice right citizens and activists reacted with big demonstrations, for instance battling the controversial decision via picketing, blocking the roads.

In contrast, entrepreneurs have already won several lawsuits, demanding compensation from activists for hindering their activities or discrediting their goodwill.

Also I would like to mention that there are several examples when citizens themselves protect their rights. The reason is not the legislation compliance with the convention - their legal awareness has grown thanks to Environmental NGOs and Aarhus centers.

Few days ago, on 14 February the European Court of Human Rights (ECHR) delivered six judgments against Armenia for the expropriation of the applicants' land for mining in Shnogh and Teghout villages. Overall, Armenia has to pay €70,000 to the concerned villagers. 2 applicants are pending for the ECHR judgments.

More than 10 years ago Armenian Government adopted resolutions changing the category of land areas for the implementation of Teghout mine development project (1278-N) and recognizing eminent domain over 81,483 ha land areas within the administrative boundaries of Shnogh and Teghout villages (1279-N), as well as over forest areas. The ECHR judgments are a real opportunity for the reopening due to precedent right of both these 106 families' cases and for 1800 former Landusers of Dalma Orchards to whom the first decision of Compliance Committee on non-compliance of Armenia with article 9 of the Convention concerns.

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22.02.2019