

EXTRACT

ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

Administrative case number VD/1049/05/15

JUDGMENT

ON PARTLY DENYING ADMISSION OF THE CLAIM AND ON RETURNING OF OTHER PART

09 April 2015

City of Yerevan

The Administrative Court of the Republic of Armenia, Judge K. Zarikyan, having examined, as per claim, the issue admitting the claim filed by the Tehmine Yenokyan, Goharik Yenokyan, Derenik Yenokyan, Sevak Mkrtchyan, Armen Hambardzoumyan, Vanik Hovhannisyan, Aram Hovsepyan, Artur Mkrtchyan, Alexan Mnatsakanyan, Gagik Grigoryan, Nairi Nersisyan, Non-Governmental Organization “Ecodar”, Non-Governmental Organization “Ecological Right”,

FOUND THE FOLLOWING

On 2 April 2015, Tehmine Yenokyan, Goharik Yenokyan, Derenik Yenokyan, Sevak Mkrtchyan, Armen Hambardzoumyan, Vanik Hovhannisyan, Aram Hovsepyan, Artur Mkrtchyan, Alexan Mnatsakanyan, Gagik Grigoryan, Nairi Nersisyan, Non-Governmental Organization “Ecodar”, Non-Governmental Organization “Ecological Right” filed a claim with the Administrative Court of the Republic of Armenia against the Republic of Armenia Ministry of Nature Protection, the Republic of Armenia Ministry of Energy and Natural Resources, the Republic of Armenia Sevan lake protection expert commission of the National Academy of Science. The plaintiffs are inhabitants of Gndevaz community and announced that respondents adopted a number of acts concerning the Amulsar gold-quartzite open-pit mine located in the Republic of Armenia Vayots Dzor Marz, in the immediate vicinity of Gndevaz community, and the community will be affected by the proposed activity. The plaintiffs claimed:

1. to declare unlawful the affirmation of positive conclusion of the Amulsar gold-quartzite open-pit mine exploitation project by the Sevan lake protection expert commission of the

National Academy of Science, developed by the "Geoteam" CJSC and affirmed in the session of Sevan lake protection expert commission on 24 September 2014;

2. to invalidate the Environmental Impact Assessment Affirmative Conclusion number BF-76 approved by the RA Minister of Nature Protection on 17 October 2014;
3. as a consequence, to invalidate the Order 188-A of the RA Minister of Energy and Natural Resources issued on 11 November 2014; the license SHATV29/245 issued on 26 September 2012 and reformulated on 12 November 2014; the Modification of the Mining Act LV-245 issued on 26 September 2012 and modified in 12 November 2014; the Order 286-A of the RA Minister of Energy and Natural Resources on "Enlargement of mining area and extension of license" issued on 24 November 2014; based on the indicated Order, the Modification of Mining Act LV-245 issued on 26 September 2012 and modified on 25 November 2014; as well as the Modification of SHATV29/245 by the same minister issued on 26 September 2012 and modified on 29 November 2014.

The Analysis of the Administrative Court

Taking into account the interrelationship of the first and the second demands the Court will discuss them jointly, and the third claim will be discussed separately.

- 1) The issue of admission of the first and the second demands:

Based on the strategy of efficient and just judicial protection of human rights guaranteed by the Articles 18 and 19 of the RA Constitution, the institute of administrative justice allows the physical and legal entities litigate the administrative decisions, acts or omissions of state government and local self-government bodies and their officials in an administrative procedure only in case when the rights or liberties of the latter were interfered. In particular, the Paragraph 1 Article 3 of the RA Administrative Procedure Code stipulates the condition for physical and legal entities for their legal standing to file a claim in the Administrative Court: if such entity believes that the administrative decision, act or omission of state government or local self-government bodies or their officials violated or may directly violate their rights and liberties envisaged by the RA Constitution, International Treaties, national laws or other legal acts. Thus, the entity has legal standing to sue in the Administrative Court only those administrative acts of state government or local self-government bodies or their officials, which caused negative consequence for him. Moreover, the indicated act shall be explicit, e.g. Administrative or Real (action, omission). That is to say, through an administrative proceeding can be litigated only those acts of administrative bodies which intervened into the rights or liberties of the plaintiff.

(...)

Based on the foregoing, the results of actions of the administrative bodies not necessarily are being considered as the effect of administration activity (Administrative or Real act). Consequently, not all

of those acts themselves directly cause legal effect for the persons. During their activity the administrative bodies can create number of documents or implement physical actions which are not considered as the results of administrative proceeding and do not independently intervene into the rights or liberties of persons. Although, those acts may later serve as basis for consequent legal effects on person's rights and liberties but they are not considered to be legally affecting unless those acts are not put on the basis of an Administrative or Real act (e.g. a document created by the administrative body as an evidence for any administration proceeding or an action of administrative body directed to notify about some administrative proceeding). Therefore, similar documents or actions are not the subjects to be independently litigated. The issue of lawfulness of those documents or actions can be the subject of administrative oversight exclusively within the scope of verification of the final administrative act.

In the current case, the first and the second demands of the claim are being sued the action of Sevan Lake Protection Expert Commission of the National Academy of Science, which affirmed the positive conclusion of the Amulsar gold-quartzite open-pit mine exploitation project, developed by the "Geoteam" CJSC on 24 September 2014, and the Environmental Impact Assessment Affirmative Conclusion number BF-76 approved by the RA Minister of Environmental Protection on 17 October 2014. In such conditions the court finds it necessary to discuss legal characters of the litigated action and Expert Conclusion to reveal whether they directly interfere any right or liberty of the plaintiffs.

(...)

Based on the above-mentioned, the legislative body, aiming to protect the Sevan Lake, as the strategic ecosystem of RA conservational, economic, social, scientific, historical, cultural, aesthetic, health, climatic, recreational and spiritual value, decided to establish an expert commission within the structure of the RA National Academy of Science, which shall declare its position about the planned activities, which may have some impact on Sevan Lake. Thus, the members of the commission, being the knowledgeable persons in that area, express their opinion related the factual aspects of impact on Sevan Lake during the discussion of any issue by the liable bodies.

(...)

Based the above-mentioned, the expertise of environmental impact is being conducted by the liable authority to test the justification of the mining project and to make the decision about it. Taking into consideration that environmental impact assessment demands specific professional knowledge, the liable authority issue the mining license based on the opinion of experts.

The Conclusion of the Administrative Court

Having reviewed the claim the Court records that both the opinion of Sevan Lake Protection Expert Commission related the impact on the lake by any activity and the expert conclusion of the environmental impact assessment are the expert conclusions in accordance with the Article 45 of the Law on Administration Baselines and Administrative Proceeding. In its turn, according the Article 42 of the same Law, expert conclusion is considered as evidence in the administrative proceeding. However, the evidence of the administrative proceeding does not itself cause any legal effect for the persons. In Accordance with Paragraph 1 Article 37 of the mentioned Law, the administrative body is committed to comprehensively examine all evidences of the proceeding and constitute the factual circumstances, which are affirmed by those evidences.

In such conditions it is obvious that persons rights were not been interfered by the litigated acts, as the decision to give license for mining activity was not conditioned by those acts. Therefore, the plaintiffs do not have legal standing to litigate those acts, as the issue of assessment of evidences in the administrative proceeding in Administrative Court is the subject for discussion within the scope of verification of the legality of administrative acts admitted during the administrative decision-making.

Followed by the whole above-mentioned, the indicated part of the filed claim is not the subject for litigation in the Administrative Court. In accordance with the Point 1 Paragraph 1 Article 80 of the RA Administrative Procedure Code, it is a ground to deny the admission of that part of the claim.

(...)

Based on the foregoing and guided by Points 2-3 Paragraph 1 Article 77, Articles 79-80 of the Administrative Procedure Code of the Republic of Armenia, and Articles 130-132 of the RA Administrative Procedure Code, and Article 144 of the Civil Procedure Code, the Administrative Court hereby

DECIDES

to deny admission of the claim filed by the Tehmine Yenokyan, Goharik Yenokyan, Derenik Yenokyan, Sevak Mkrtchyan, Armen Hambarzoumyan, Vanik Hovhannisyan, Aram Hovsepyan, Artur Mkrtchyan, Alexan Mnatsakanyan, Gagik Grigoryan, Nairi Nersisyan, Non-Governmental Organization “Ecodar”, Non-Governmental Organization “Ecological Right” demanding declare unlawful the affirmation of positive conclusion of the Amulsar gold-quartzite open-pit mine exploitation project, developed by the ”Geoteam” CJSC, affirmed in the session of Sevan lake protection expert commission of the National Academy of Science on 24 September 2014; and invalidate the Environmental Impact Assessment Affirmative Conclusion number BF-76 approved by the RA Minister of Environmental Protection on 17 October 2014.

(...)

According the Paragraph 11 Article 127, and Points 1-2 Paragraph 1 Articles 131 of the Administrative Procedure Code, the current Decision enters into force 5 days after admitting it and may be appealed within a five-day period of receiving it.

JUDGE

KAREN ZARIKYAN