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“ECOLOGICAL RIGHT”

ENVIRONMENTAL

NON-GOVERNMENTAL ORGANIZATION

To the Aarhus Convention Compliance Committee

Comments on the third Progress Report on the implementation of Decision V9a on the Compliance by Armenia

Dear colleagues, hereby please find our comment concerning the implementation of the third Progress Report on the implementation of Recommendations reflected in the Paragraphs 32 (a) and 32 (c), as well as Paragraph 33 (c) of the Decision V9a on the Compliance by Armenia.

- *Paragraph 32 (a)*

Even though it is stated in the Progress Report that the Draft Law on amendments in the Administrative Procedure Code is elaborated but we did not find such a law presented to the Parliament (http://parliament.am/drafts.php?sel=onagenda&show_committee=111169), the indicated amendment did not presented to the public for discussions as well. We thoroughly examined the web-page (www.ecolex.am) as well, which was presented in the second Progress Report as a portal of information of environmental legislation changes but found extremely poor information with no proper relation to the environmental legislation and no remark on amendments of the Administrative Procedure Code.

The RA Government presented the Draft Law on Non-Governmental Organizations to the Parliament, which is passed the first hearing out of the three. However, we claim that the

presented Draft Law does not in compliance with the requirements on Access to Justice of the Aarhus Convention.

In particular, the Article 16 Paragraph 2 and 3 of the mentioned Draft Law disproportionately restricting the right to Access to Justice for NGOs. In accordance with the mentioned provisions: “the organization represents legal interests of its beneficiaries on the environmental issues in the court. The organization may file a lawsuit deriving from the issues defined by the Paragraph 2 of this Article if:

- 1) the claim derives from the statutory goals and objectives of the organization and is directed to the protection of collective interests of its beneficiaries, in line with the statutory goals and objectives of the organization;
- 2) **took part in the public hearings on the Fundamental Document or the Anticipated Activity organized in accordance with the Law on Environmental Impact Assessment and Expertise or had no opportunity to participate;** and
- 3) had at least 2 years of experience in the area listed at Paragraph 2 of this Article.

We find that such regulation is not in line with the Requirements of the Convention as it leaves the window to litigate unlawful administrative decisions only in the scope of public hearings of certain projects organized within the Law on EIA but not the violations of environmental legislation and related human rights. In line with this regulation, the organization can-not claim the alleged unlawful actions of responsible administrative bodies if it did not participate in the related public hearings passed long ago. At the same time, the provision “... **or had no opportunity to participate**” is too discretionary and can be interpreted arbitrarily. We consider not correct to link the right of Access to Justice with the EIA procedure either, as there can be necessity for judicial protection in cases with no direct relation to the EIA or public hearing processes too (e.g. provision of environmental information, public participation in environmentally sound activity out of EIA public hearing procedure, etc).

Even though we addressed the mentioned comments to the representatives of the Government and the Parliament asking them to amend the draft definitions and match them with the requirement of the Convention, it was not taken into account. Even now there is a window to change the definitions of the Draft Law on NGOs when it is still being discussed in the Parliament but we do not see willingness from the site of responsible state bodies to do so. Thus, we claim that the Recommendation of the Committee of Paragraphs 32 (a) Decision V9a on the Compliance by Armenia is not implemented.

- *Paragraph 32 (c)*

In accordance with the presented third Progress Report, the Government initiated amendments in its Decree 1325-N adopted on 19 November 2014. However, we find that presented amendments do not properly implement the Recommendation of the Committee "... to increase the short timeframes for the public to consult project-related documentation and to submit the comments within the EIA procedure." Disappointingly, the presented amendments just increase the timeframes from 2 to 5 days for the three categories of activity, which is not in line with the Article 6, Paragraph 3 of the Aarhus Convention.

Thus, the public participation procedures do not include reasonable time-frames for the public to prepare and participate effectively during the environmental decision-making and the Recommendation of the Committee of Paragraphs 32 (c) is not implemented. We think that amendments to this regard shall be made in the Law on EIA and change the tight timeframes for decision-making and public review principally.

- *Paragraph 33 (c)*

Recommendation of the Committee of Paragraphs 33 (c) is not reflected in the third Progress Report at all. However, we consider it as a principal point to present additional evidences that trainings with judges had taken place, present the names of participants and information on financial allocations for organizing the trainings (state allocations, international support, etc).

Particular information on this matter is especially important to estimate the efficiency of this type of activity on the efficiency of implementation of the addressed recommendations or compliance with the Convention. Here we shall also have in mind that the new Communication from Armenia is determined admissible by the Compliance Committee concerning the Ruling of Administrative Court, which is allegedly not in line with the provisions of Access to Justice of the Aarhus Convention (<http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc2016138-armenia.html>). The indicated court's Ruling was adopted after the mentioned trainings of judges which puts the efficiency of mentioned trainings under suspicion.

Thus, we find that Thus, we claim that the Recommendation of the Committee of Paragraphs 33 (c) Decision V9a is not implemented.

- *Conclusion*

We consider that Recommendations of the Compliance Committee on the Decision V9a on the Compliance by Armenia were not duly implemented even though there was a sufficient amount of time to fulfill them after the second Progress Report. Legal amendments have not been properly done and the draft regulations are not in compliance with the Aarhus Convention.

Hereby we confirm our strong position *to declare suspension over the privileges and special rights given to Armenia in frames of the Aarhus Convention in accordance with the Decision 1/7 point 37 (g).*

Sincerely,

Artur Grigoryan

Chairperson of "Ecological Right" Non-Governmental Organization