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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Seventy-second meeting

Geneva, 18–21 October 2021

Item 9 of the provisional agenda

Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2016/138 concerning compliance by Armenia*

Adopted by the Compliance Committee on 24 July 2021

I. Introduction

1. On 21 February 2016, environmental non-governmental organization (NGO) Ecological Right (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging non-compliance by the Party concerned with the Convention in connection with its alleged failure to ensure access to justice for environmental NGOs with respect to the environmental impact assessments for the Amulsar open-pit mine.
2. More specifically, the communicant alleged that the Party concerned failed to comply with its obligations under article 9 (2) in conjunction with articles 2 (2) (a) and 6 (2) (c) and (8); and article 9 (3) in conjunction with articles 2 (2) (b) and 3 (1) of the Convention in connection with the Amulsar open-pit mine.
3. At its fifty-third meeting (Geneva, 21–24 June 2016), the Committee determined on a preliminary basis that the communication was admissible.¹
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention (ECE/MP.PP/2/Add.8), the communication was forwarded to the Party concerned on 27 September 2016.

* This document was scheduled for publication after the standard publication date owing to circumstances beyond the submitter's control.

¹ ECE/MP.PP/C.1/2016/5, para. 58.



5. On 28 February 2017, the Party concerned provided its response to the communication.
6. On 21 May 2017, the communicant provided comments on the response of the Party concerned.
7. On 23 May 2018, the secretariat, at the request of the Committee, wrote to the Party concerned and the communicant seeking their views on whether, given the substance of the communication, they would consider it appropriate for the Committee to proceed to commence its deliberations on the substance of the communication without holding a hearing.
8. On 8 June 2018, the communicant stated that it considered that it would be appropriate for the Committee to commence its deliberations on the substance of the communication without holding a hearing.
9. The Party concerned did not provide its views as to whether a hearing was needed, despite several reminders.
10. At its sixty-second meeting (Geneva, 5–9 November 2018), after taking into account the communicant's view of 8 June 2018 and the lack of a reply by the Party concerned, the Committee agreed to commence its deliberations without holding a hearing. At the same meeting, the Committee confirmed the admissibility of the communication and agreed to send questions to the parties.
11. On 14 October 2019, the Committee sent questions to the parties for their written reply and invited any further written submissions. On 9 November 2019 and 19 January 2020, respectively, the communicant and the Party concerned submitted their replies to the Committee's questions.
12. On 16 November 2020, the Committee requested the communicant to provide English translations of relevant judgments by 23 November 2020. Following a reminder from the secretariat, the communicant provided part of the requested translations on 23 January 2021.
13. On 26 February 2021, the Party concerned provided a translation of a section omitted from one of the judgments provided by the communicant on 23 January 2021.
14. On 11 June 2021, the Committee requested the communicant to comment on the translated excerpt of the judgment provided by the Party concerned on 26 February 2021 and to explain why that excerpt had been omitted from its own translation. On 13 June 2021, the communicant provided its comments on the excerpt provided by the Party concerned.
15. The Committee completed its draft findings through its electronic decision-making procedure on 14 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date to the Party concerned and the communicant for their comments. Both were invited to provide comments by 23 July 2021.
16. Neither the Party concerned nor the communicant sent comments on the Committee's draft findings.
17. The Committee proceeded to finalize its findings in closed session and adopted its findings through its electronic decision-making procedure on 24 July 2021. It agreed that the findings should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues²

A. Legal framework

Provisions governing administrative proceedings

18. Article 3 (1) (2) of the Law on “Principles of Administration and Administrative proceedings” (Law on Administrative Proceedings) defines “administration” as “an activity of State bodies, which [has] external impact and which is concluded (finalized) by [the] adoption of an administrative or normative act, also actions or inactions [which cause] factual consequences for persons”.³

19. Article 59 (1) of the Law on Administrative Proceedings in turn defines an “administrative act” as “a decision, order, injunction or other personal legal act, which has external impact, which [an] administrative body has adopted in the sphere of public law aimed [at] the regulation of [a] concrete issue and which is directed to the definition, change, elimination or recognition of rights and obligations for persons.”⁴

20. According to article 37 (1) of the Law on Administrative Proceedings, the administrative body is committed to comprehensively examining all evidence in the proceeding and factual circumstances that are affirmed by the evidence.⁵

Provisions concerning mining activities

21. Article 50 (2) of the 2011 Mining Code stipulates that “it is forbidden to conduct the mining activity without the mining project, which properly exposed required State expertiza.”⁶

22. The Ministry of Energy and Natural Resources is the entity responsible for issuing the final approval or denial of a mining licence, taking into account, among other issues, the results of the expertiza conclusion(s).⁷

23. Pursuant to article 54 (3) of the Mining Code, the mining right consists of four documents: (a) the mining permit; (b) the mining contract; (c) the land allocation act; and (d) the mining project, which has acquired all necessary expert conclusions. Under article 7 (1) of the Mining Code, a mining project requires three types of expertiza conclusions: a geological expertiza; an environmental impact expertiza; and a technical security expertiza. A mining permit can only be granted if the mining project received positive conclusions on all three expert assessments.⁸

The laws governing environmental impact assessment and expertiza

24. The law on “Environment impact assessment and expertiza” (EIA Law), as adopted on 21 June 2014, provides for public participation, including hearings, in decision-making on specific activities. According to article 26 of the EIA Law, to ensure public awareness and participation, assessment and expertiza processes should be notified and discussed. The Law furthermore requires the “initiator” and the authorizing body “to take into consideration [the] public’s reasonable comments and suggestions[,] otherwise they should provide substantial reasons.”⁹

² This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

³ Party’s response to the communication, p. 5.

⁴ *Ibid.*, pp. 5–6.

⁵ Communication, annex 1, p. 4.

⁶ Communication, p. 5, and annex 6.

⁷ Party’s response to the communication, pp. 6–7.

⁸ Communicant’s reply to the Committee’s questions, 9 November 2019, pp. 1–2.

⁹ Party’s response to the communication, p. 2.

25. Implementation of the expertiza is regulated by Government Decision N 399-N of 9 April 2015 “Laying down the order of environmental impact assessment [expertiza] of fundamental documents and intended activities.”¹⁰

26. The “Centre for Environmental Impact Expertiza”, a specially created State body within the Ministry of Nature Protection, is the competent authority for approving the State environmental expertiza. The EIA Law defines the Centre as the body with “administrative liabilities”. Without a positive expertiza conclusion, the main document’s acceptance and the implementation of the intended activity is forbidden.¹¹

27. The only procedure that provides for public participation in environmental decision-making is the EIA procedure and State environmental expertiza.¹²

Special provisions for activities which may have an impact on Lake Sevan

28. Lake Sevan is a specially preserved water ecosystem and is therefore highly protected by the legislation of the Party concerned, specifically the Law on Lake Sevan (Lake Sevan Law).¹³

29. According to article 25 of the Lake Sevan Law, entitled “Declaration of the impact on the environment”: “Business entities are committed to present the corresponding declaration to the liable body before starting the economic activity or changes of the technology. Within a month, the liable body adopts the decision on permission or denial of the economic activity, based on the results of expertiza implemented in line with the legislation.”¹⁴

30. Articles 19–21 of the Lake Sevan Law establish the Lake Sevan Protection Expertiza Commission (Lake Sevan Commission) as a unit acting within the structure of the National Academy of Sciences.¹⁵ Its mission, according to article 20 of the Lake Sevan Law, is the independent and professional expertiza of complex and annual programmes (reports), as well as documents elaborated by State-authorized bodies responsible for implementing programmes or reports.¹⁶ The Lake Sevan Commission consists of nine members, who are appointed by the President of the National Academy of Sciences.¹⁷

31. According to point 7 (on “monitoring and control of programme”) of the Law on “Approving the annual and complex programmes on protection, reproduction, restoration and use of [the] ecosystem of Lake Sevan,” the responsible body for both project implementation and monitoring of the programme is the Ministry of Nature Protection. The control of annual and complex programmes is carried out by the National Assembly of the Republic of Armenia. The independent and professional expertiza of programmes is carried out by the Lake Sevan Commission. The expertiza does not include the outcome of public participation.¹⁸

Access to justice

32. Pursuant to articles 18 and 19 of the Constitution of the Republic of Armenia, physical or legal entities may challenge administrative decisions, act or omissions of the State government and local self-government bodies and their officials in an administrative procedure in cases in which their rights or liberties have been interfered with.¹⁹

33. According to article 3 (1) of the Administrative Procedure Code, a physical or legal entity has standing if it believes that an administrative decision, act or omission of State government or local self-government bodies or their officials violated or may directly violate

¹⁰ Ibid.

¹¹ Communication, pp. 2 and 4–5; Party’s response to the communication, pp. 4 and 6.

¹² Communication, p. 5.

¹³ Ibid., p. 2, and annex 6.

¹⁴ Communication, p. 5, and annex 6.

¹⁵ Party’s response to the communication, p. 6; Communicant’s reply to the Committee’s questions, 9 November 2019, p. 2; Party’s reply to the Committee’s questions, p. 2.

¹⁶ Party’s response to the communication, pp. 6–7.

¹⁷ Ibid., p. 7.

¹⁸ Ibid.

¹⁹ Communication, annex 1, p. 2.

its rights and liberties under the Constitution, international treaties, national laws or other legal acts.²⁰

34. Article 72 (1) (1) of the Administrative Procedure Code provides that an administrative act may be submitted to the administrative court within two months from the date on which the administrative act enters into force. Article 79 (1) (6) specifies that a lawsuit will be rejected if the time-frame for appeal has expired and no motion has been filed to restore it.²¹

B. Facts

35. In September 2012, the Ministry of Energy and Natural Resources issued mining licences Nos. SHATV28/24 and SHATV29/245 for the exploitation of the Amulsar gold-quartzite open-pit mine.

36. On 24 September 2014, the Lake Sevan Commission issued a positive expertiza conclusion for the extension of the Amulsar gold-quartzite open-pit mine near the Gndevaz community in Armenia.²² The mine is located in the Lake Sevan water catchment area.²³ The proposed extension would increase the area of the open-pit mine by an additional 153 hectares.²⁴

37. On 17 October 2014, the Ministry of Nature Protection issued the BP-76 positive expertiza conclusion for an extension of the mining project.²⁵

38. On 11 November 2014, the Ministry of Energy and Natural Resources issued Order 188-A. On 12 November 2014, licence No. SHATV28/24 was modified. On 24 November 2014, the Ministry of Energy and Natural Resources issued Order 286-A on the “Enlargement of mining area and extension of licence”. Based on that Order, a further modification of Mining Act LV-245 was granted on 25 November 2014, and a further modification of licence No. SHATV29/245 was made on 29 November 2014.²⁶

39. On 2 April 2015, more than ten members of the Gndevaz community and two environmental NGOs, including the communicant, challenged: the positive expertiza conclusion of the Lake Sevan Commission of 24 September 2014 (claim 1); the positive expertiza conclusion of the Ministry of Nature Protection of 17 October 2014 (claim 2); as well as the orders and licences issued by the Ministry of Energy and Natural Resources (claim 3).²⁷

40. On 9 April 2015, the Administrative Court rejected the claimants’ legal challenge.²⁸

41. Regarding claims 1 and 2, the Administrative Court ruled that neither the Lake Sevan Commission expertiza conclusion nor the State environmental expertiza conclusion of the Ministry of Nature Protection were administrative acts that directly interfere with a person’s rights. Rather, these were the “expert conclusions” of specialists within the meaning of article 45 of the Law on Administrative Proceedings. As such, the expert conclusions could be considered as evidence in the administrative proceeding and litigation in relation to other administrative acts, such as licences or permits for exploitation pursuant to article 42 of that Law. However, according to the Court, these expert conclusions do not themselves cause any legal effect for persons. In such circumstances, the Court concluded that a person’s rights were not interfered with by the expert conclusions, as the decision to issue the licence for the

²⁰ Ibid.

²¹ Excerpt of Administrative Court judgment dated 9 April 2015, provided by the Party concerned on 26 February 2021, p. 1.

²² Communication, p. 2, annex 1, pp. 1–2; Party’s response to the communication, p. 1.

²³ Communication, p. 6.

²⁴ Communication, annex 5.

²⁵ Communication, p. 2, annex 1, p. 2; Party’s response to the communication, p. 1.

²⁶ Communication, annex 1, p. 2.

²⁷ Communication, p. 2; Party’s response to the communication, p. 1; Party’s reply to the Committee’s questions, 19 January 2020, p. 1.

²⁸ Communication, p. 3; Party’s response to the communication, p. 1.

mining activity was not conditioned by those acts.²⁹ Thus, the legality of the expertiza conclusions could not, in and of themselves be subject to review by the court but could be considered as evidence in litigation to challenge the exploitation licences.³⁰

42. Regarding claim 3, the Administrative Court rejected the claimants' challenge regarding the licences on the grounds that the claim was not submitted until 2 April 2015, that is to say, nearly five months after the licence was issued, and no motion had been submitted to restore the time-frame. Moreover, the claimants had failed to pay the required State duty.³¹

43. On 27 April 2015, the claimants appealed the Administrative Court's ruling to the Administrative Court of Appeal. In its judgment of 12 June 2015, the Administrative Court of Appeal rejected the appeal, affirming the lower court's ruling.³²

44. On 23 June 2015, the claimants appealed to the Court of Cassation, which rejected the appeal's admissibility on 22 July 2015.³³

45. As of January 2020, the mining licence for the Amulsar open-pit mine, issued by the Ministry of Territorial Administration and Infrastructure under the number SHATV-28/245 of 26 September 2012, is legally in force. All documents necessary for the right to commence the mining exploitation have been granted.³⁴

C. Domestic remedies and admissibility

46. The communicant refers to its litigation up to the Court of Cassation to claim that domestic remedies have been exhausted (see paras. 39–44 above). It submits that no other international appeals or mechanisms have been used with respect to the violations of the Convention alleged in the communication.³⁵

47. The Party concerned does not claim that the communicant has failed to exhaust domestic remedies.

D. Substantive issues

Article 9 (2) in conjunction with article 2 (2) (a)

48. The communicant alleges that article 9 (2) in conjunction with article 2 (2) (a) of the Convention was violated because the Administrative Court ruled that the positive expertiza conclusion of the Ministry of Nature Protection was not the "final administrative act."³⁶ The communicant submits that, in accordance with the legislation and practice of the Party concerned, the final EIA procedure is the State environmental expertiza and the positive expertiza conclusion by the Ministry of Nature Protection. The communicant states that there is no State body responsible for environmental policy and decision-making or ensuring public participation other than the Ministry of Nature Protection. The communicant submits that the court's ruling therefore means that the Ministry of Nature Protection is not a public authority and its positive expertiza conclusion is not a legally binding act but merely an opinion of specialists.³⁷

²⁹ Communication, annex 1, p. 4.

³⁰ Communication, p. 3; Party's response to the communication, p. 1; Communicant's comments on Party's response to the communication, 21 May 2017, p. 1.

³¹ Excerpt of Administrative Court judgment dated 9 April 2015, provided by the Party concerned on 26 February 2021, pp. 1–3.

³² Communication, p. 3; Party's response to the communication, p. 1.

³³ Ibid.

³⁴ Communicant's reply to the Committee's questions, 9 November 2019, pp. 1–2; Party's reply to the Committee's questions, 19 January 2020, pp. 1–2 and 4.

³⁵ Communication, p. 4.

³⁶ Ibid., p. 7.

³⁷ Ibid.

49. Whilst the Party concerned does not expressly address the communicant's claims under article 9 (2) in conjunction with article 2 (2) (a), it confirms that the Administrative Court, as well as the Court of Appeal and Court of Cassation, found that the positive expertiza conclusion of the Ministry of Nature Protection is not an administrative act and therefore cannot be challenged in court. Specifically, it submits that the expertiza conclusion of the Ministry of Nature Protection is not an administrative act within the meaning of articles 3 (1) (2) and 59 of the Law on Administrative Proceedings (see paras. 18–19 above), despite the fact that the expertiza conclusion is approved by a State body, namely the Ministry of Nature Protection.³⁸

50. Whilst conceding that, without a positive expertiza conclusion, “the main document's acceptance and the implementation of the intended activity is forbidden,”³⁹ the Party concerned submits that an expertiza conclusion is not an administrative or normative act within the meaning of article 3 (1) (2) of the Law on Administrative Proceedings (see para. 18 above).

51. The Party concerned contends that its legislation ensures judicial review of an expertiza conclusion in the framework of judicial review of the granted permit, and that an assessment of the expertiza conclusion, as evidence in the court proceedings, is the mechanism by which the State ensures the review of its lawfulness. The Party concerned submits that the court thus assesses the legality of the expertiza conclusion from both a substantive and procedural point of view.⁴⁰

52. Lastly, the Party concerned submits that challenging the expertiza conclusion together with the “final decision”, which it suggests is the granted permit, will be more effective.⁴¹ In this regard, the Party concerned submits that, in its findings on communication ACCC/C/2011/58 (Bulgaria),⁴² the Committee concluded that the fact that an expertiza conclusion is not subject to independent review did not violate article 9 (2) and (3) because the public can make the expertiza conclusion subject to an assessment by means of litigating the decision adopted after the project.⁴³

Article 9 (2) in conjunction with article 6 (2) (c)

53. The communicant alleges that article 9 (2) in conjunction with article 6 (2) (c) was violated by the Administrative Court's ruling that the positive expertiza conclusion of the Ministry of the Nature Protection is not “the final act” and thus the legality of this conclusion cannot be the subject of litigation.⁴⁴ It points out that, in its findings on communication ACCC/C/2009/37 (Belarus),⁴⁵ the Committee found that the assessment of impact upon the environment (OVOS) and the State environmental expertiza should be considered jointly as a decision-making process involving a form of EIA procedure, and that the conclusions of the State environmental expertiza should be considered as a decision on whether to permit an activity.⁴⁶

54. The Party concerned does not expressly address the communicant's allegations under article 9 (2) in conjunction with article 6 (2) (c). However, its submissions in paragraphs 49–52 above can be considered to address these allegations.

Article 9 (2) in conjunction with article 6 (8)

55. The communicant alleges that article 9 (2) in conjunction with article 6 (8) of the Convention was violated by the Administrative Court's determination that the claimants had no standing to challenge the BP-76 positive expertiza conclusion by the Ministry of Nature

³⁸ Party's response to the communication, pp. 1 and 5–6.

³⁹ *Ibid.*, p. 4.

⁴⁰ *Ibid.*, p. 6.

⁴¹ *Ibid.*

⁴² ECE/MP.PP/C.1/2013/4.

⁴³ Communication, p. 6.

⁴⁴ *Ibid.*, p. 7.

⁴⁵ ECE/MP.PP/2011/11/Add.2.

⁴⁶ Communication, p. 7.

Protection. The communicant claims that the need for authorities to seriously consider the outcome of public participation and to address it in decision-making, policy-making and law-making is a key aspect of the Convention.⁴⁷

56. The communicant alleges that the public concerned found that its comments and concerns were not duly taken into account by the public authorities responsible for the environmental decision-making for the project and thus filed a lawsuit against the outcomes of the Ministry of Nature Protection's positive expertiza conclusion. It claims that, by dismissing the claimants' claim, the Administrative Court rejected the opportunity to protect the position of the public concerned regarding the admissibility and thoroughness of its comments presented to the public authorities in relation to the project.⁴⁸

57. The Party concerned does not address the communicant's allegations under article 9 (2) in conjunction with article 6 (8).

Article 9 (3) in conjunction with article 2 (2) (b)

58. The communicant claims that article 9 (3) in conjunction with article 2 (2) (b) was violated by denying the claimants standing to challenge the positive conclusion of the Lake Sevan Commission regarding the impact of the project on Lake Sevan. The communicant states that a decision of the Commission is required to execute a proposed activity if the activity is to be conducted in the area of enforcement of the Lake Sevan Law. The communicant submits that, in line with article 3 of that Law, the project is located in the Lake Sevan water catchment area, and the Commission was obliged to adopt a decision permitting or denying the project pursuant to article 25 of that Law.⁴⁹ The communicant claims that, if the Lake Sevan Commission had issued a negative conclusion regarding the impact of the Amulsar open-pit mine on Lake Sevan, the mining permit for the mine would have had to have been denied.⁵⁰

59. The communicant submits that the Commission is a "public authority" within the meaning of article 2 (2) of the Convention, as the Commission is considered to be the State body that has certain legally defined responsibilities to make decisions permitting or denying projects that could affect the Lake Sevan ecosystem, based on an environmental assessment. The communicant submits further that the Commission's expertiza conclusion has the same legal force as all other expert conclusions that are required to grant a permit in line with the Mining Code, and thus the Commission's positive expertiza conclusion is part of the documentation required to grant the mining right for the Amulsar open-pit mine.⁵¹

60. The communicant claims that the legislation does not directly regulate the public participation procedure regarding the decision-making of the Lake Sevan Commission. Nor, according to the communicant, does the Commission's position affect the final positive expertiza conclusion of the Ministry of Nature Protection, as the Ministry does not need to take into account or refer to the Commission's conclusions.⁵²

61. The communicant submits that the Lake Sevan area includes more than 40 surrounding communities that could be directly affected by any impact on the lake's ecosystem. The communicant states that the lake is of vital importance for the country and the Caucasus region, with its 35 billion m³ of spring water and unique ecosystem. The communicant claims that none of the communities participated in the decision-making process, despite the fact that the decision of the Commission should be based on the assessment and consideration of the impact on communities and general impacts.⁵³

62. The communicant submits that, given the foregoing and bearing in mind that public participation in environmental decision-making is implemented through the EIA procedure, the expert conclusion of the Lake Sevan Commission should ensure full public participation,

⁴⁷ Ibid., p. 6.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Communicant's reply to the Committee's questions, 9 November 2019, p. 2.

⁵¹ Communication, p. 7; Communicant's reply to the Committee's questions, 9 November 2019, p. 3.

⁵² Communication, p. 8.

⁵³ Ibid.

as its decisions determine whether industrial activities with potential impacts on the Lake Sevan may proceed.⁵⁴

63. The Party concerned submits that, according to the Lake Sevan Law, the legal status of the Commission is “a unit acting [with]in the structure of the National Academy of Sciences”.⁵⁵ The Party concerned submits that the mission of the unit is the independent and professional expertiza of complex and annual programmes (reports), as well as documents elaborated by State-authorized bodies responsible for implementing programmes or reports. It submits that the Commission is a separate unit of a State body and “does not hold individual responsibility”.⁵⁶ It claims that the legal status of the Lake Sevan Commission and its expertiza conclusion are significantly different from that of the EIA expertiza centre in the Ministry of Nature Protection and its expert conclusion as defined by the Law on EIA.⁵⁷ In particular, it submits that the “liable body” referred to in article 25 of the Lake Sevan Law is the Ministry of Nature Protection (see para. 29 above).⁵⁸

64. The Party concerned submits further that articles 19–21 of the Lake Sevan Law do not explicitly state the imperative nature of the Commission’s conclusions, and notes that the Administrative Court in the litigation at issue in the present communication considered that the Commission’s conclusions, like the environmental expertiza conclusions, were expert opinions under article 45 of the Law on Administrative Proceedings (see para. 41 above).⁵⁹

65. The Party concerned submits that, according to article 20 of the Lake Sevan Law, the Commission carries out “preliminary” and “summarizing” expertiza, yet, under article 7 of the Law on “Approving the annual and complex programmes on protection, reproduction, restoration and use of [the] ecosystem of Lake Sevan”, the responsible body for the project implementation is the Ministry of Nature Protection. The Party concerned contends that the Commission carries out an independent professional study and gives its conclusion, which is not obligatory for decision-makers and does not have a foreclosing meaning, but is merely an advisory document.⁶⁰

66. The Party concerned confirms that the results of public participation are not included in the expertiza conclusion of the Lake Sevan Commission.⁶¹

67. The Party concerned submits that the expertiza conclusion of the Lake Sevan Commission does not give a conclusion on the permissibility of an activity, but on whether the programme is well grounded or not. The decision on permissibility is adopted by the responsible body (the Ministry of Energy and Natural Resources) taking into account, among other things, the results of the conclusion.⁶²

68. The Party concerned maintains that the expertiza conclusion of the Lake Sevan Commission can be subject to review in the context of litigation regarding the final decision of the responsible State body.⁶³

Article 3 (1)

69. The communicant submits that its allegations as summarized above demonstrate systemic problems with the judicial practice of the Party concerned. It submits that the violation of article 9 (3) in conjunction with article 3 (1) is an ongoing issue in the judicial practice of the Party concerned. It notes that, since the Party concerned ratified the Convention in 2001, three communications have been submitted concerning non-compliance with different provisions of the Convention, and that in all three cases, the Committee found non-compliance. In this regard, the communicant points specifically to the Committee’s

⁵⁴ Ibid.

⁵⁵ Party’s response to the communication, p. 6.

⁵⁶ Ibid, p. 6–7.

⁵⁷ Ibid, p. 6.

⁵⁸ Party’s reply to the Committee’s questions, 19 January 2020, p. 2.

⁵⁹ Ibid, p. 1.

⁶⁰ Party’s response to the communication, p. 7.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

findings on communications ACCC/C/2004/8, ACCC/C/2009/43 and ACCC/C/2011/62, each concerning the Party concerned. The communicant submits that no substantive progress has occurred, and that the same violations occur repeatedly, which consequently leads to the violation of article 3 (1).⁶⁴

70. The communicant alleges that, as is stated in the *The Aarhus Convention: An Implementation Guide*,⁶⁵ Parties must not only ensure that all the relevant legislation is on its face clear and consistent with the Convention, but must also guard against the inconsistent application of that legislation by public authorities, or inconsistent decisions by judicial and administrative bodies, by taking measures to ensure that such bodies interpret and apply the relevant legislation in a clear, transparent and consistent manner. The communicant points out that, in its findings on communication ACCC/C/2005/11 (Belgium),⁶⁶ the Committee recalled the obligation in article 3 (1) and noted that the independence of the judiciary cannot be taken as an excuse by a Party for not taking the necessary measures. In this regard, the communicant alleges that its communication emphasizes a fundamental problem of permanent and total non-observance of the provisions of the Convention by the Party concerned, which is reflected in the “absolute ignorance of the regulations of the Convention” on the part of the judicial authority.⁶⁷

71. The Party concerned submits that its legislation is fully compliant with the Convention.⁶⁸

III. Consideration and evaluation by the Committee

72. Armenia deposited its instrument of ratification of the Convention on 1 August 2001. The Convention entered into force for Armenia on 30 October 2001.

Admissibility

73. The communication primarily concerns the alleged denial of standing to the communicant and others to challenge the licences and expertiza conclusions related to the November 2014 extensions of the Amulsar open-pit mine. The communicant extensively used domestic remedies to challenge the mining extensions, including an appeal to the Court of Cassation.

74. The Party concerned has not challenged the admissibility of the communication.

75. The Committee determines the communication to be admissible.

Article 9 (2) and (3) – general observations

76. The communicant alleges non-compliance with article 9 (2) and (3) of the Convention with respect to three types of decision: (a) the positive expertiza conclusion of the Lake Sevan Commission of 24 September 2014; (b) the BP-76 positive expertiza conclusion of the Ministry of Nature Protection of 17 October 2014; and (c) the mining licence extensions of November 2014.

77. When evaluating the compliance of the Party concerned with article 9 of the Convention with respect to each of these decisions, the Committee takes into consideration the general picture on access to justice, in the light of the purpose also reflected in the preamble of the Convention, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced”.⁶⁹

⁶⁴ Communication, pp. 8–9; Communicant’s reply to the Committee’s questions, 9 November 2019, p. 3.

⁶⁵ United Nations publication, Sales No. E.13.II.E.3.

⁶⁶ ECE/MP.PP/C.1/2006/4/Add.2.

⁶⁷ Communication, pp. 9–10.

⁶⁸ Party’s response to the communication, p. 7.

⁶⁹ Convention, preambular para. 18; See also findings on communication ACCC/C/2006/18 (Denmark), ECE/MP.PP./2008/5/Add.4, para. 30.

78. In addition, when assessing access to justice with respect to the different types of decisions, such as, in this case, the positive expertiza conclusion of the Lake Sevan Commission and the positive expertiza conclusion of the Ministry of Nature Protection, the Committee bears in mind that the question of whether a decision should be challengeable under article 9 is determined by the legal functions and effects of a decision, not by its label under national law.⁷⁰

Article 9 (2)

Decision, act or omission subject to article 6 of the Convention

79. Pursuant to article 6 (1) (a) of the Convention, each Party shall apply the provisions of article 6 with respect to decisions on whether to permit proposed activities listed in annex I to the Convention. Paragraph 16 of annex I to the Convention applies to quarries and opencast mining where the surface of the site exceeds 25 hectares. Under paragraph 22 of annex I, any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in that annex, shall be subject to article 6 (1) (a).

80. The November 2014 extensions to the Amulsar mine, which the communicant seeks to challenge in this case, extended the open-pit mining area by 153 hectares. The extensions thus markedly exceed the threshold of 25 hectares set out in paragraph 22 of annex I of the Convention. The November 2014 decisions to extend the mine are therefore subject to article 6 (1) (a) and thereby to the provisions of article 6.

81. Article 9 (2) requires that members of the public concerned having a sufficient interest have access to a review procedure to challenge the substantive and procedural legality of decisions, acts or omissions subject to the provisions of article 6. Accordingly, members of the public concerned having a sufficient interest were entitled to have access to a review procedure to challenge the substantive and procedural legality of the November 2014 decisions to permit the extension of the Amulsar mine.

BP-76 positive expertiza conclusion of the Ministry of Nature Protection of 17 October 2014

82. In accordance with article 54 (3) of the Mining Code (see para. 23 above), the mining right consists of four “documents”: (a) the mining permit; (b) the mining contract; (c) the land allocation act; and (d) the mining project, which has acquired all necessary expert conclusions. Under article 7 (1) of the Mining Code, a mining project requires three types of expertiza conclusions: a geological expertiza; an environmental impact expertiza; and a technical security expertiza. A mining permit can only be granted if the mining project received positive conclusions on all three expert assessments.⁷¹

83. The Committee considers that, together, the mining permit and the expertiza conclusions are part of the tiered decision-making to permit the article 6 activity. As such, the substantive and procedural legality of each of these “documents” must be subject to review under article 9 (2) of the Convention. As explained, however, in paragraph 84 below, this does not mean that each “document” must necessarily be challengeable on its own. Rather, it is sufficient for the purposes of article 9 (2) if the substantive and procedural legality of each such “document” can be reviewed in the context of the mining permit or licence itself.

84. On this point, the Committee recalls its earlier findings in communication ACCC/C/2011/58 (Bulgaria), where it held that:

If activities listed in annex I to the Convention are permitted by a number of tiered decisions, it may not be necessary to allow members of the public concerned to challenge each such decision separately in an independent court procedure. Accordingly, if one or more of the decisions have a preliminary character and are in

⁷⁰ See findings on communication ACCC/C/2005/11 (Belgium), ECE/MP.PP/C.1/2006/4/Add.2, para. 29, and findings on communication ACCC/C/2006/16 (Lithuania), ECE/MP.PP/2008/5/Add.6, para. 57.

⁷¹ Communicant’s reply to the Committee’s questions, 9 November 2019, pp. 1–2.

some way integrated into a subsequent decision, a Party may remain in compliance with the Convention if the previous decision is subject to judicial review upon appeal of the final decision.⁷²

85. The Committee accordingly considers that the fact that the positive expertiza conclusion of the Ministry of Nature Protection cannot be reviewed separately does not in itself amount to non-compliance with the requirements of article 9 (2) of the Convention, provided that members of the public can actually challenge the positive expertiza conclusion of the Ministry of Nature Protection either together with any subsequent decision, or together with the final decision/permit (in the present case, the November 2014 mining licence extensions).

Positive conclusion of the Lake Sevan Commission of 24 September 2014

86. Pursuant to article 25 of the Lake Sevan Law: “Business entities are committed to present the corresponding declaration to the liable body before starting the economic activity or changes of the technology. Within a month, the liable body adopts the decision on permission or denial of the economic activity, based on the results of expertiza implemented in line with the legislation.”⁷³

87. In the light of the above provision, the Committee considers that, for each activity subject to article 25 of the Lake Sevan Law, the positive conclusion of the Lake Sevan Commission is a mandatory prerequisite in order to commence the activity. Thus, just as with each of the documents listed in article 54 (3) of the Mining Code, the positive conclusion is a mandatory prerequisite for an activity subject to article 25 of the Lake Sevan Law to be commenced, and is thus to be considered part of the tiered decision-making under article 6 to permit the activity.

88. This does not mean however, that the positive conclusion of the Lake Sevan Commission must be subject to challenge under article 9 (2) on its own. Rather, it is sufficient for the purposes of article 9 (2) if the substantive and procedural legality of the positive expertiza conclusion can be challenged in the context of a challenge to the licence extensions themselves.

November 2014 mining licence extensions

89. As noted in paragraph 34 above, article 72 (1) (1) of the Administrative Procedure Code provides that an administrative act may be submitted to the administrative court within two months from the date on which the administrative act enters into force. Article 79 (1) (6) specifies that a lawsuit will be rejected if the time-frame for appeal has expired and no motion has been filed to restore it.

90. The mining licence extensions at issue in this case entered into force in November 2014. According to article 72 (1) (1) of the Administrative Procedure Code, any appeal of those licences should thus have been submitted to the administrative court in January 2015, at the latest. Alternatively, a motion to restore the time-frame for appeal should have been filed under article 79 (1) (6).

91. In its judgment of 9 April 2015, the Administrative Court rejected the claimants’ challenge regarding the licences on the grounds that the claim was not submitted until 2 April 2015, that is, nearly five months after the licence was issued, and no motion had been submitted to restore the time-frame. In addition, the Court stated that the claimants had failed to provide documents certifying they had paid the required State duty.⁷⁴

92. In the light of the above, the Committee considers that the communicant has not demonstrated that, had it submitted its claim to the Administrative Court in time and paid the required State duty, it would not in fact have been entitled to challenge the procedural and substantive legality of the November 2014 licence extensions, and through them, of the

⁷² ECE/MP.PP/C.1./2013/4, para. 77.

⁷³ Communication, p. 5, and annex 6.

⁷⁴ Excerpt of Administrative Court judgment dated 9 April 2015, provided by the Party concerned on 26 February 2021, pp. 1–3.

Ministry of Nature Protection and the Lake Sevan Commission's positive expertiza conclusions.

93. For the above reason, the Committee finds the communicant's allegation that the Party concerned failed to comply with article 9 (2) of the Convention to be not substantiated.

94. The Committee furthermore expresses its serious concern that the sections of the Administrative Court's judgment of 9 April 2015 stating that the Court rejected the claimants' claims regarding the November 2014 licence extensions for being submitted out of time and for not having proved that they had paid the required State duty were omitted from the English translation of the "full text" of the judgment the communicant provided to the Committee.⁷⁵ The communicant's omission occurred in the face of the Committee's clear and specific request to the communicant for it to provide an English translation of the "complete judgment".⁷⁶ Moreover, in its covering email submitting the incomplete judgment to the Committee, the communicant expressly stated that the enclosed judgment was indeed the "full text".⁷⁷ The Committee makes clear that it is critical to the integrity of the Convention's compliance mechanism that all those engaging with the Committee, whether Party, communicant or observer, act at all times in good faith and with full disclosure in their dealings with the Committee.

Article 9 (3) – Lake Sevan Commission positive conclusion

95. The communicant submits that the rejection of its court challenge of the Lake Sevan Commission's positive expertiza conclusion amounts to a breach of article 9 (3) of the Convention. Without examining whether the Lake Sevan Commission's positive conclusion indeed amounts to an act within the scope of article 9 (3) of the Convention, the Committee finds that, since the communicant submitted its court challenge of the mining licence extensions out of time and without proof of having paid the required State duty, its allegation that the Party concerned failed to comply with article 9 (3) of the Convention is not substantiated.

IV. Conclusion

96. Based on the foregoing considerations, the Committee finds that the Party concerned did not fail to comply with article 9 (2) and (3) of the Convention in the circumstances of this case.

⁷⁵ Communicant's email enclosing Administrative Court judgment of 9 April 2015, 23 January 2021.

⁷⁶ Committee's request to communicant to provide English translations of relevant documents, 16 November 2021.

⁷⁷ Communicant's email enclosing Administrative Court judgment of 9 April 2015, 23 January 2021.