

# Communication to the Aarhus Convention Compliance Committee

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## State concerned by the communication:

Republic of Armenia

## Facts of the alleged non-compliance:

In the Lori region of Armenia, near rural settlements of Teghut and Shnogh deposits of copper and molybdenum (later- deposits) were found still in 1970s. The given territory is covered with forests, is rich in flora and fauna, including species registered in the Red Book. Besides, the deposit is situated in the watershed of transboundary river Debed. Before the events described below the deposit has not been exploited.

In 2001, RA Government provided a license to the “Armenian Copper Programme” closed joint-stock company (later- Developer) to exploit the deposit for a term of 25 years.

In 2004, in connection with changes in legislation, the Developer was issued another type of exploitation license with a term until 2025.

By the decision of the Prime Minister of RA an inter-agency commission for coordination of support of Teghut mine deposit was established. On September 30, 2005, this commission approved the concept of deposit exploitation, which was then adopted by the Prime-Minister.

Contrary to requirements of RA legislation, the concept wasn't submitted to environmental impact expertise (state environmental review).

In 2006, the Developer arranged for preparation of the Environmental Impact Assessment (EIA) document, which was submitted to the Ministry of Nature Protection for environmental expertise. On April 3, 2006, the Ministry gave a positive conclusion with several additional requirements, including one on that the Developer has to submit for review the Working Document (working project) of the exploitation of the deposit.

Working Document was developed for the first 8 years of operation and later, on November 7, 2006 it received a positive conclusion of the Ministry of Nature Protection.

On March 23, 2006 and October 12, 2006 public hearings were held in relation with the Environmental Impact Assessment document and the Working Document.

On November 1, 2006 RA Government adopted a decision to allocate 735 hectares of land to the Developer without competition, with a term of 50 years to develop and open-pit mine, with a right to cut 357 ha of forests.

Communicants submitted a lawsuit to the Administrative Court of RA to challenge the above-mentioned decisions and acts of state institutions. Lawsuit was based on the alleged breach by the latter of Art. 1, 6, 10 and 33.2 of RA Constitution, some articles of RA Land Code, RA Water Code, RA Code of Earth Resources, RA Law on Concessions, RA Law on Flora, RA Law on Fauna and RA Law on Environmental Impact Expertise (See *Attachment*)<sup>1</sup>. Communicants also found that there were violations of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context as well as of the Aarhus Convention.

In particular, Communicants claimed in the lawsuit that there was a breach of Art. 6(2), 6(4), 6(8), 6(9) and 6(10) of the Aarhus Convention (ratified by the Republic of Armenia on August 1, 2001). Briefly, these statements were justified by the following considerations:

Exploitation of the deposit is covered by Art. 6(1) of the Aarhus Convention, as this activity corresponds to point 16 of Annex 1 of the Convention. Besides, issuance of the license for exploitation of deposit in 2001 and renewal of the license in 2004, the positive conclusions of the Ministry of Nature Protection from April 3, 2006 and November 7, 2007, the decision of RA Government from November 1, 2007 are "decisions" in the meaning of Art. 6 of the Aarhus Convention. Thus, in adoption of such decisions the Republic of Armenia was obliged to ensure public participation in accordance with the requirements of Art. 6.

Meanwhile, in the given case, "public participation" was expressed by two events— in March 23, 2006 there was a public hearing related to the EIA, and on October 12, 2006 a hearing on the Working Document of the project. Communicants find that there was a breach of Art. 6(2) based on that there was no public participation in the early stages, in that stage the public was not notified about information outlined in Art. 6(2) "a", "b", "d" and "e". In particular, the first hearing was held on 23.03.2006 regarding EIA, while at that point of time the developer has already been given a special license for exploitation of the deposit. In addition, representatives of the public, who attended the hearing on March 23, 2006 were not presented the environmental information related to the environmental impacts throughout the full operation of the project (50–70 years). The same was related to the hearing of October 12, 2006, during which the

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<sup>1</sup> Currently available in Russian.

presented Working Document covered to only the first 8 years of the operation of the project. Thus, never the subject of public hearings did include the consequences of the whole program of exploitation of the deposit. The public was not informed about preparation of a decision on allocating 735 ha of lands and heard about that only after its adoption. Neither was it notified about the license agreement, signed on September 8, 2007 between the Government and Developer.

Violation of Art. 6(4) is observed in that there was no effective public participation as in the moment when the public was informed and engaged in discussions the major decisions have already been made – the Developer was already given a license for exploitation of the deposit, Government has established an interagency commission for coordination of activities in support of program of exploitation of Teghut deposit, which, on September 30, 2005 approved the concept of the program for exploitation, which in its turn was adopted by the Prime Minister.

Violation of Article 6(8) is observed in that none of the above-mentioned decisions reflected and considered results of public participation. Article 6(9) was violated by the fact that amongst all the above-mentioned decisions the public was notified only about the decisions of the Government, yet, too, after adoption of the decision. And finally, the Communicants observed violation of Art. 6(10) in that during the renewal of the license in 2004 the public was not notified at all.

Lawsuit of Communicants has not been considered by the Court. Decision of Administrative Court from July 9, 2009 rejected acceptance of the application with following justification:

“A person cannot apply to the court with any or an abstract demand, but may make a claim only if he/she is a person concerned, i.e. if the administrative body has violated his/her public subjective rights ... a person may seek administrative justice only if he/she finds that administrative proceedings have directly touched his/her rights and interests. Persons may not anticipate the check of legality of any administrative proceeding not directly related to them merely because they are generally interested in lawful actions of administrative bodies.”

In its decision the Administrative Court among other arguments also referred to the Aarhus Convention Art. 9(3).

Communicants found that the given decision is not in compliance with Article 9 of the Aarhus Convention and submitted an appeal to the Administrative Court, which, by its decision adopted with participation of three judges on July 28, 2009, left in force the previous decision.

In present, Communicants have submitted a complaint to the Court of Cassation (on August 7, 2009). Nevertheless, according to law, the Court of Cassation is not obliged to consider all the complaints and has a broad discretion in taking it for consideration. In particular, the Court of Cassation shall consider complaints in case if its respective decision may have a significance for uniform interpretation of the law; if the decision of a lower instance contradicts to the earlier decision of the Court of Cassation or if the decision of the lower instance may result in severe consequences. Thus, taking into consideration that according to Art. 92(2) of RA Constitution, the Court of Cassation has to ensure uniform interpretation of the law, Communicants think that in the given case Court of Cassation cannot be considered as an effective measure for legal defense, though have addressed to it their complaint. The Court of Cassation has not yet adopted a decision about taking the complaint of Communicants.

In order to justify that Communicants have a right to seek justice in the courts, Communicants,

among other relevant arguments, referred to the Conclusions and Recommendations adopted by the Compliance Committee related to Armenia (Communication ACCC/C/2004/08). In response, the Administrative Court, in its decision from July 28, 2009, mentioned the following: "... The Court finds that the challenged acts did not violate the rights of applicant organizations and touch their interests...". In respect with that the Court also stated that it should not consider the given argument of Communicants as those Conclusions and Recommendations have been adopted in relation with a different issue, not related to the demands presented in the lawsuit.

**Nature of the alleged non-compliance:**

Based on the above mentioned facts, Communicants think that there has been a breach of their rights for public participation as well as access to justice. Also there has been non-correct implementation of the provisions of the Convention (related to the interpretation of Article 9 of the Convention by the Administrative Court).

Violations included: principle of public participation in early stages (Art. 6(2)); principle of ensuring effective public participation (Art. 6(4)); principle, according to which decisions have to reflect and consider results of public participation (Art. 6(8)); principle, according to which the public has to be immediately notified about decisions made (Art. 6(9)); principle, according to which in case of update of operating conditions the provisions of 2-9 of Art. 6 of the Convention have been applied (Art. 6(10)); principle of access to justice in environmental matters (Art. 9(2)).

**Provisions of the Convention alleged to be contravened:**

In Communicants' opinion, the Republic of Armenia in the presented case has failed to comply with the following provisions of the Aarhus Convention - Article 6(2), 6(4), 6(8), 6(9), 6(10) and Article 9(2), and in relation with the mentioned Article 2(4) and 2(5) of the Convention.

**Domestic and other remedies:**

Communicants believe that all the effective domestic remedies have been utilized (See *Facts of the alleged non-compliance*).

Communicants did not apply to other international procedures.

Communicant

*Signature*

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