



AMERICAN UNIVERSITY OF ARMENIA

Center *for*  
Responsible Mining

Mining Legislation Reform Initiative

# Analysis of Courts Cases related to Mining and Environmental Issues

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December 2016

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**Keywords:** Mining, Responsible, Armenia, Court Cases, Environment

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## How to Cite This Report

Alumyan, H. (2016). Analysis of Courts Cases related to Mining and Environmental Issues, Mining Legislation Reform Initiative, AUA Center for Responsible Mining, American University of Armenia (Yerevan, Armenia). Retrieved from <http://mlri.crm.aua.am>.

## Introduction

Set out below is a detailed analysis of a range of cases concerning mining and environmental issues. The areas covered include cases in the Armenian administrative and civil courts concerning environmental protection and damage, property and employment issues, as well as relevant decisions of the Constitutional Court and the European Court of Human Rights.

### Tabular summary of analysed court cases related to mining and environmental issues

Subject of case	Type of court	Number of cases analysed
Environmental protection and damage	Administrative court	4
Property disputes	Civil court	10
Labor disputes	Civil court	8
Compliance with the Constitution of a) Aarhus Convention b) Administrative Procedures Code	Constitutional Court	2
Private life and family rights	ECHR	5

## Environmental protection and damage

The four cases discussed below concern applications made in respect of the licences granted for Teghut and Amulsar, and involve issues concerning the standing of NGOs and individuals to apply in administrative proceedings, as well as interpretation of the provisions of the Aarhus Convention.

### 1. Administrative Case № VD/3275/05/091

#### **Background to the case**

The Lori Region of Armenia is an area rich in biodiversity. In the 1970s, resources of copper and molybdenum (henceforth referred to as *resources*) were discovered in the vicinity of Teghut and Shnogh villages. On April 8 of 2001, the Government of the Republic of Armenia granted a 25-year license for the operation of reserves to Manex & Vallex CJSC that was the predecessor of the undertaker of the Armenian Copper Programme. In 2004, the type of the special license for mining of the Armenian Copper Programme was subjected to revision through the amendments done to the 2002 Law on Concession. However, the terms and duration of that license remained intact. An interdepartmental commission was created by the decree of the Prime Minister and tasked with reviewing and coordinating activities that supported the program of Teghut mine operation. On September 30, 2005, the commission decided to approve the strategy on resource use. Armenian legislation in general (Mining Code and Law on Concession) does not require the adoption of such a strategy.

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<sup>1</sup> So called “Teghut Case” related to the Teghut mine.

In 2006, the undertaker (mining company) initiated the implementation of the environmental impact assessment (EIA) procedure followed by state environmental expertise. The process of decision-making on environmental permits coordinated by the Ministry of Nature Protection included two phases of the EIA and Environmental Expertise procedure, and during each of these, public hearings were held. The announcement regarding the hearings on the EIA documents was published in the March 17, 2006 issue of the newspaper Republic of Armenia (Hayastani Hanrapetutyun). Subsequently, the hearings were held on March 23, 2006, and the positive expert conclusions were given on April 3, 2006. The announcement on the hearings for the review of the working paper of the project was published in the September 28<sup>th</sup> and 29<sup>th</sup> issues of Iravunk and Hayastani Hanrapetutyun newspapers in 2006. The hearings were held on October 12, 2006, and the positive expert conclusion was given on November 7, 2006. On November 1, 2007, the government adopted a decision to allocate 735 ha of land to the undertaker for the time period of 50 years to start development of the mine, which included the right to log 357 ha of forest area. The licensing agreement was signed by the government and the undertaker on September 8, 2007.

### ***The claim***

Transparency International Anti-corruption Center, Helsinki Citizen's Assembly Vanadzor Office, and Ecodar environmental non-governmental organizations filed a lawsuit against the Government of Armenia, the Ministry of Nature Protection, the Ministry of Energy and Natural Resources, and third party Armenian Copper Programme CJSC demanding:

- To revoke the HV-MSh-13/33 license for the operation of the Teghut mine issued to the Armenian Copper Programme CJSC on 08/Feb/2001, and
- To annul the positive environmental impact assessment expert conclusions № BP-31 and №BP-135 of the Armenian Minister of Nature Protection issued respectively on 03/Apr/2006 and 07/Nov/2006, and the Republic of Armenia (RA) Government Decree №1278-N of 01/Nov/2007 on "Allocating and changing the target designation of lands for the implementation of the development plan of the Teghut copper-molybdenum mine;"
- To invalidate the HV-L-14/90 special license issued to the Armenian Copper Programme CJSC for the operation of the Teghut copper-molybdenum mine, the Licensing Agreement №316 on Mining signed on 09/Oct/2007 by the Armenian Copper CJSC, RA Ministry of Trade and Economic Development, and the RA Ministry of Nature Protection; the special license №21 issued to the Armenian Copper Programme CJSC on 29/Dec/2005 for minerals use; the Licensing Agreement №140 on the Exploration of Minerals for the Purpose of Use signed between the Armenian Copper Programme CJSC and the RA Ministry of Nature Protection, as well as the Strategy on the Development Program of the Teghut Copper-Molybdenum Mine adopted on 30/Sep/2005 by the interdepartmental commission coordinating the activities supporting the Teghut mine development project;

- To oblige the defendants to cease all activities foreseen by the Teghut mine development program of the Armenian Copper Programme CJSC.

### ***The decision of the court of first instance***

The RA Administrative Court rejected the claim on 09/Jul/2009 with the reasoning that “An individual may not file for judicial protection with any or abstract demands but may do so if he/she is a stakeholder party, and so the subjective rights of the individual were violated by an administrative entity ... administrative justice may be sought only by the entity (physical or legal) which believes that its rights or interests were directly affected through administrative actions. Individuals may not seek audit of any administrative act not related to them solely for the reason of being interested in the legal activities of administrative entities.” As grounds for its verdict, the Administrative Court cited Article 19 of the RA Constitution, Article 3 of the RA Code of Administrative Court Procedure, paragraph 1 of article 3, and article 15 of the RA Law on Non-governmental Organizations, as well as section 3 of Article 9 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters /Aarhus Convention/.

### ***The appeal process***

Transparency International Anti-corruption Center and Ecodar NGO filed a complaint against the 09/Jul/2009 decision which was rejected by the RA Administrative Court on 28/Jul/2009. Transparency International Anti-corruption Center and Ecodar then filed a complaint at the Court of Cassation.

In October of 2009, the claimants also applied to the Compliance Committee of the Aarhus Convention requesting to recognize the violations of paragraphs 2, 4, 8, 9 and 10 of Article 6 of the Convention, paragraph 2 of Article 9, and paragraphs 4 and 5 of Article 2.<sup>2</sup>

On 30/Oct/2009, the RA Court of Cassation partially upheld the claim of Ecodar NGO and Transparency International Anti-corruption Center overturning the part of the 28/Jul/2009 Administrative Court decision rejecting the claim of Ecodar NGO. The part of the said decision rejecting the claim of the Transparency International Anti-corruption Center was left unchanged. The Court of Cassation had found that the Transparency International Anti-corruption Center NGO did not have the right to judicial procedure for environmental issues because the charter of that organization did not state objectives related to environmental protection, whereas Ecodar NGO, according to the Court, had the right to such procedure because it had provisions in its charter related to environmental issues. In this decision the Court of Cassation has displayed an important position regarding the right to apply to court.

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<sup>2</sup> Information about this appeal are presented in a separate section of this analysis relating to the cases of Armenia at the Aarhus Compliance Committee.

*“The Court [the three-judge Administrative Court panel] has rejected the complaint of the claimants against the decision of the RA Administrative Court to refuse to take into proceeding the claim with the reason that the claimants clearly do not have the right to file such a claim as the rights of those public organizations were not violated or affected by the claim in question.”*

*The Court of Cassation acknowledges that Ecodar is a non-governmental organization registered in correspondence with the RA Law on Public Organizations, corresponds to the standards defined by national legislation, and is engaged in environmental issues based on the goals and objectives stated in its Charter.*

*Taking into account the aforementioned, the Court of Cassation finds that Ecodar Environmental NGO is a concerned organization in the sense of the Aarhus Convention, and therefore has the right to judicial protection related to environmental issues stemming from its statutory purposes.*

*In such circumstances, the rejection of the claim of Ecodar Environmental NGO based on the application of paragraph 3 of section 1 of article 15 of the RA Law on Public Organizations has no grounds.”*

Following the 30/Oct/2009 decision of the Court of Cassation, the Administrative Court had no choice but to take into proceeding the lawsuit filed by Ecodar NGO. Therefore, the Administrative Court did so and held a hearing on 24/Mar/2010, where the court decided to hold a speedy trial and move on to the deliberation room without hearing the case. On the same day, the Administrative Court rejected the petition deeming it “clearly groundless.” In the reasoning of this decision, the court repeated the justifications of the decision made on 09/Jul/2009:

*“An individual may not file for judicial protection with any or abstract demands but may do so if he/she is a stakeholder party, and so the subjective rights of the individual were violated by an administrative entity ... administrative justice may be sought only by the entity (physical or legal) which believes that its rights or interests were directly affected through administrative actions. Individuals may not seek audit of any administrative act not related to them solely for the reason of being interested in the legal activities of administrative entities.”*

After this, referring to article 15 and the first paragraph of article 1 of the RA Law on Public Organizations, the Administrative Court has made the following verdict:

*“Neither the Law on Public Organizations, nor any other law of the Republic of Armenia defines a right of public organizations to seek judicial protection for any or abstract demands. Moreover, Article 3 of the Republic of Armenia Code of Administrative Court Procedure stipulates that they do not have such a right.”*

Ecodar NGO appealed this decision to the RA Court of Cassation, which rejected the appeal on 01/Apr/2011 citing such reasoning that are completely contradict its very own reasoning presented in its decision made on 30/Oct/2009. In the decision of 01/Apr/2011, the Court of Cassation stated:

*In its № SDV-906 decision of 07/Sep/2010, the Constitutional Court of Armenia examined the position of the petitioner claiming that Article 19 of the RA Constitution foresees a wider range of entities having the right to apply to court, than that of individuals whose rights have been directly violated, therefore the term “its” following the term “violated” in paragraph 1 of section 1 of article 3 of the RA Code of Court Procedure does not comply with the RA Constitution. In its aforementioned decision, the Constitutional Court of Armenia decided that the term “its” following the term “violated” did comply with the RA Constitution.*

*The above-mentioned shows that the RA legislation is based on the logic that the efficiency of protection of violated rights includes, among other things, the right to apply to court for individuals whose rights have been directly violated. ... The RA legislation foresees a right to apply to court only for individuals whose rights have been directly violated by the disputed act, action or inaction.<sup>3</sup>*

### **Applications to Aarhus Compliance Committee**

It should be noted that Ecodar and Transparency International Anti-corruption Center have applied to the Aarhus Compliance Committee twice regarding this case insisting that the Republic of Armenia has violated the provisions of the convention. In the first case, the Compliance Committee found that during the decision-making process regarding the Teghut mine the rights of the public concerned to be informed of the planned activities from the earliest stage and to take part in the decision making procedure were violated. In the second case (following the 01/Apr/2011 decision of the Court of Cassation), the Committee acknowledged that the right of Ecodar NGO to judicial protection was violated.<sup>4</sup>

#### 1.1 The first communication (ACCC/C/2009/43) submitted to the Aarhus Compliance Committee regarding the Teghut mine

On September 23, 2009, Transparency International Anti-corruption Center, Ecodar and Helsinki Citizen’s Assembly Vanadzor Office NGOs submitted a communication to the Aarhus Compliance Committee where they noted that the Republic of Armenia had not carried out the obligations stated in paragraphs 2, 4, 8, 9 and 10 of article 6, and paragraph 2 of Article 9

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<sup>3</sup>As it can be noted, in order to deviate from its former position, the Court of Cassation has taken as basis the 07/Sep/2010 decision of the Constitutional Court, which was made during the time period between the first and second decisions of the Court of Cassation. However, after careful review of the decision by the Constitutional Court, it can be seen that the positions stated in it are in harmony with the first decision of the Court of Cassation but contradict the second decision of the Court of Cassation. More details are presented regarding this decision of the Constitutional Court in the relevant section of the present analysis.

<sup>4</sup> The decisions of the Committee are presented in more detail in points 1.1 and 1.2.

of the Convention. The communication noted that the Party to the Convention (a) did not inform the public concerned early regarding the adoption of the decision on licensing, (b) did not ensure effective participation of the public early in the procedure, (c) did not take into account the outcomes of public participation in the decision-making, and (d) did not inform the public at all about license extensions or informed the public only after the licenses were extended. In addition, the communication also noted that ignoring the right of the authors of the communication (Authors) to challenge the legitimacy of those licenses in Armenian courts, the Party has not fulfilled its obligation set in paragraph 2 of article 9 of the Convention.

The authors of the communication have insisted that the provisions on public participation foreseen by article 6 of the Convention apply to all those decisions that have been appealed in Armenian courts based on the juxtaposition of paragraph 1(a) of Article 6 and paragraph 16 of the annex of the Convention. The Authors believed that the Party to the Convention did not ensure the implementation of the requirements of the Convention related to public participation when making the relevant decisions.

The Authors also claimed that according to the Armenian legislation, the strategy adopted by the intergovernmental commission on September 30, 2005 was supposed to be subjected to a procedure of environmental impact expert examination. Furthermore, the Authors insisted that the public concerned was not informed early enough during the decision-making process, and did not receive any information regarding the elements foreseen by paragraphs 2 (a), (b), (d) and (e) of article 6, which would allow them to prepare for the public hearings organized for March 23 of 2006 and October 12 of 2006. With this respect the Authors insisted that the public hearing on March 23, 2006 was organized already after issuing the special license of resource use to the undertaker, that the information presented to the public concerned during those two public hearings was not comprehensive, and that the public was never notified of land designation decisions (decision of November 1, 2007), did not participate in the making of those decisions, and was not informed of the agreement signed between the government and the undertaker (September 8, 2007).

The Authors claimed that in 2006 the public hearings were organized when the most important decisions had already been made (the special license for operation was already issued to the undertaker in 2004, and the project was reviewed by the interdepartmental commission in 2005), which meant that the public concerned did not have the opportunity to effectively participate in the decision-making process which was a violation of the requirement set by paragraph 4 of article 6 of the Convention.

The Authors insisted that the Party to the Convention did not take into account the principles of public participation in the decision-making procedure and that the public was informed of the decisions only after they were made. Therefore, the Authors claimed that the Party did



not meet the obligations set by paragraphs 8 and 9 of article 6. It was also claimed that the Party to the convention violated paragraph 10 of article 6 by extending in 2004 by extending the validity of the mining license that issued in 2001.

The Authors claimed that the Party to the Convention violated paragraph 2 of Article 9 because the court rejected its petition to revise the procedure on the basis that the corresponding administrative proceeding did not affect the rights and interests, also because the Court of Cassation had rejected the appeal for Transparency International.

Finally, the Authors claimed that no significant progress was made in Armenia following the adoption of the ACCC/C/2004/08 recommendation of the Committee approved by the III/6b decision of the meeting of Parties to the Convention.

The Committee made the following conclusions:

*The Committee Concluded that regarding the Teghut case the Republic of Armenia had not implemented the requirement of paragraph 1 of article 3 of the Convention, as well as the requirements of paragraphs 2, 4 and 9 of article 6.*

The Committee made the following recommendations regarding the above-mentioned:

*The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties and noting the agreement of the Party concerned that the Committee take the measure referred in paragraph 37 (b) of the annex to decision I/7, recommends to the Government of Armenia to take the necessary legislative, regulatory, and administrative measures and practical arrangements:*

*A) To undertake necessary legislative measures to ensure that:*

*(i) thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;*

*(ii) to the extent possible, clarify the legal effects of acts, so that there is a clearer distinction between decisions under article 6 and article 7*

*(iii) ensure that the public is informed as early as possible in the decision-making procedure, when all options are open and that reasonable time frames are set for the public to consult and comment on project-related documentation;*

*(iv) define as clearly as possible the responsibilities of different actors (public authorities, local authorities, developer) on organizing of public participation procedures.*

*b) To arrange the system of prompt notification of the public concerned on final conclusions of environmental expertise of EIA documentation of specific projects, e.g. through the web site of the Ministry of Nature Protection.”*

1.2. The second communication /ACCC/C/2011/62/ submitted to the Aarhus Compliance Committee regarding the Teghut mine:

As it is evident from the above-mentioned procedures, during the review of the first communication regarding Teghut, the Court of Cassation of Armenia had already made its 30/Oct/2009 decision stating that:

*“Ecodar is a non-governmental organization registered in correspondence with the RA Law on Public Organizations, corresponds to the standards defined by national legislation, and is engaged in environmental issues based on the goals and objectives stated in its Charter. Taking into account the aforementioned, the Court of Cassation finds that Ecodar Environmental NGO is a concerned organization in the sense of the Aarhus Convention, and therefore has the right to judicial protection related to environmental issues stemming from its statutory purposes.”*

This was the reason that despite acknowledging a number of violations by Armenia /noted in the previous point/, the Aarhus Compliance Committee did not find a violation of article 9 of the Convention.

The situation changed when the Court of Cassation changed its legal positions and in its decision of 01/Apr/2011 cited reasoning that was totally in contradiction with the reasoning of its own verdict made on 30/Oct/2009: *“...The RA legislation is based on the logic that the efficiency of protection of violated rights includes, among other things, the right to apply to court for individuals whose rights have been directly violated. ... The RA legislation foresees a right to apply to court only for individuals whose rights have been directly violated by the disputed act, action or inaction.”*

Following the 30/Oct/2009 decision of the Court of Cassation, Ecodar NGO again applied to the Aarhus Compliance Committee, this time related to the violation of article 9 of the Convention /communication ACCC/C/2011/62/. In its decision adopted on 16/Jun/2013, the Committee concluded that in the case of Teghut the Republic of Armenia has violated paragraph 2 of article 9 of the Aarhus Convention. The Committee, among other things, concluded: ***while the wording of the legislation of the Party concerned does not run counter to article 9, paragraph 2, of the Convention, the decision of the Court of Cassation of 1 April 2011, by declaring that the environmental NGO did not have standing, failed to meet the standards set by the Convention.***

**At the Aarhus Parties meeting on June 30 and July 1 of 2014, decision V/9a was adopted relating to the implementation of obligations undertaken by Armenia through the Aarhus Convention. This document states:**

*Urges the Party concerned to accelerate the process for the new legislation on environmental impact assessment (EIA), including the procedures on public participation contained in it, to be finalized and come into effect.*

*Invites the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:*

- i. Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;*
- ii. The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;*
- iii. The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;*
- iv. A system of prompt notification of the public concerned of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;*

*Invites the Party concerned to:*

- a. Prior to their adoption and no later than 1 September 2014, provide the Committee with an English translation of the text of the draft EIA law and other legislative measures as they stand on that date for the Committee's review;*
- b. Provide the Committee with evidence that the draft EIA law and other legislative measures that have been proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted;*

*Endorses the finding of the Committee with regard to communication ACCC/C/2011/62 that, while the wording of the legislation of the Party concerned does not run counter to article 9, paragraph 2, of the Convention, the decision of the Court of Cassation of 1 April 2011, by declaring that the environmental NGO did not have standing, failed to meet the standards set by the Convention. Thus the Party concerned fails to comply with article 9, paragraph 2, of the Convention.*

*Invites the Party concerned to:*

- a. Review and clarify its legislation, including the law on NGOs and administrative procedures, so as to ensure compliance with article 9, paragraph 2, of the Convention with regard to standing;*
- b. Take the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention."*

**On 08/Apr/2016, in its progress review of the implementation of decision V/9a on compliance by Armenia with its obligations under the Convention, the Aarhus Compliance Committee states:**

31. *The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9a, though it welcomes the steps taken by the Party concerned to date in that direction.*

32. *The Committee invites the Party concerned, prior to the submission of its final progress report due on 31 October 2016:*

*(a) With respect to the recommendations set out in paragraphs 4 (b), 5 (a) and 7 (a) of decision V/9a, to accelerate the process of adoption of the Law “On Nongovernmental Organizations” and the amendments to the Administrative Procedure Code and to provide the Committee with English translations of the drafts of the abovementioned laws in advance of their adoption;*

*(b) Regarding the recommendation set out in paragraph 4 (c) (i) of decision V/9a, to provide the Committee with English translations of the relevant excerpts of its legislation to demonstrate that all the activities listed in annex I of the Convention would be subject to a public participation procedure in accordance with article 6, paragraph 1(a) of the Convention;*

*(c) With respect to the recommendations set out in paragraph 4 (c) (ii) of decision V/9a and the Committee’s considerations set out in paragraphs 21 and 22 above, to remedy the omission of environmental NGOs from the scope of the “public concerned”; to increase the short timeframes for the public to consult project-related documentation and to submit comments within the EIA procedure; and to remove the unwarranted restriction in paragraph 24 of the “Procedure of holding public notification and discussions” on the public’s right to submit any comments, information, analyses or opinions it considers relevant to the proposed activity.*

33. *The Committee invites the Party concerned, together with its final progress report due on 31 October 2016 to:*

*(a) Provide evidence before the Committee that the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a have been fulfilled;*

*(b) Provide the Committee with English translations of all legislation adopted for the purpose of implementing decision V/9a; (c) Provide the Committee with more information on the outcomes of the trainings carried out in accordance with paragraph 7(b) of decision V/9a – for example attendance, lecturers, feedback from participants, media reports, articles in the specialized media provoked by the trainings.*

34. *The Committee reminds the Party concerned that all measures necessary to implement decision V/9a must be completed by, and reported upon in, the Party’s final progress report due on 31 October 2016 as that progress report will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of the decision.”*

[http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9a\\_Armenia/ToPartyV9a\\_Second\\_progress\\_review\\_on\\_V.9a\\_Armenia.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9a_Armenia/ToPartyV9a_Second_progress_review_on_V.9a_Armenia.pdf)

## 2. Administrative Case № VD/3431/05/13

### **Background**

The issue was that on 31/Jul/2012 the Ministry of Nature Protection of the Republic of Armenia had issued Geoteam CJSC the expert conclusion № BP65 on the environmental impact related to the exploitation of the gold-bearing quartzite mine of Amulsar. However, during the process of issuing the conclusion, the population of the city of Jermuk, which is located 12km away from the mine was not included in the list of affected communities. As a result, the population of Jermuk is deprived of the opportunity to take part in planned discussions and express their viewpoints. On 22/Mar/2013, the claimant had petitioned the RA Prime Minister to recognize Jermuk as a community affected by the exploitation of the Amulsar mine. The petition was redirected to the Ministry of Nature Protection. On 04/Apr/2013, the claimant received a note from the director of the “Environmental Expert Examination” non-commercial state organization (State Organization), A. Gevorgyan, which stated that the city of Jermuk could not be recognized as a community affected by the exploitation of the Amulsar mine.

### **The lawsuit**

A lawsuit was brought by Viktoria Grigoryan against the RA Prime Minister and the RA Ministry of Nature Protection demanding to recognize Jermuk as a community affected by the exploitation of the Amulsar mine.

On 16/May/2013, the Administrative Court rejected the lawsuit making citing article 3 of the RA Code of Administrative Court Procedure, article 4 and 7 of the RA Law on Local Self-Government, and the Constitutional Court decision № SDV906 of 07/Sep/2010. According to the Administrative Court, “An individual may not file for judicial protection with any or abstract demands but may do so if he/she is a stakeholder party, and so the subjective rights of the individual were violated by an administrative entity ... administrative justice may be sought only by the entity (physical or legal) which believes that its rights or interests were directly affected through administrative actions. Individuals may not seek audit of any administrative act not related to them solely for the reason of being interested in the legal activities of administrative entities.” Based on this, the Administrative Court found that the lawsuit was brought by an entity that clearly did not have the right to do so, thus the claim was rejected through the application of point 4 of paragraph 1 of article 79 of the RA Code of Administrative Court Procedure.

The claimant appealed the decision to the RA Court of Appeals which was rejected by the court on 27/Jun/2013. The claimant then appealed to the Court of Cassation, which returned the lawsuit on 21/Aug/2013 on the account that the reasons noted in the appeal were not enough to conclude that there was a material violation foreseen by point 3 of paragraph 1 of

article 118.8 of the RA Code of Administrative Court Procedure or a clearly substantial violation of norms of court procedure.<sup>5</sup>

### 3. Administrative Case № VD1726/05/15

Examining the lawsuit brought by Susanna Shakhikyan and Ecological Right NGO against the Ministry of Nature Protection of the Republic of Armenia demanding to carry out audits regarding the facts stated within their application of 15/Apr/2015, on 25/Aug/2015, the Administrative Court dismissed the case.

#### ***The claim***

The essence of the case: claimant Susanna Shakhikyan is a resident of the village of Shnogh located 6km away from the Teghut mine of Lori Region. Shnogh was recognized as an impacted community, and Shakhikyan insisted that according to paragraph 4 and 5 of article 2 of the Aarhus Convention, she was a member of the *public concerned*. Since Ecological Right NGO had environmental protection listed in its statutory purposes, the organization also insisted that the definition of “the public concerned” also applied to them. On 15/Apr/2015, the claimants had petitioned the RA Ministry of Nature Protection to conduct audits in Teghut mine stating that the mine was already being operated in the frameworks of the new plan, for which no legally defined environmental impact assessment was implemented, it was not presented for public hearings and did not receive a conclusion of an expert examination. The Ministry had not carried out the request of the claimants in the defined period, which, according to the claimants, was a violation of paragraph 3:1 of article 4 of the RA Law on Organizing and Conducting Audits in the Republic of Armenia, and articles 6, 13, 25 and 37 of the RA Law on Environmental Control.

#### ***The decision of the court of first instance***

During the hearing of the case it was revealed that on 12/Jun/2015 the RA Minister of Nature Protection gave Order №000115 to conduct an audit of the Teghut mine by the state environmental inspector. According to that Order, the deputy head of the State Environmental Inspectorate (SEI) and three inspectors of the Lori department were tasked with conducting audits in Teghut CJSC from June 24 to August 4 of 2015. The representative of the RA Ministry of Nature Protection informed the court that the audits were not carried out because Government Decree №839-A of 30/Jun/2015 ordered cessation of audits in Armenia as of August 1, 2015. On 25/Feb/2015, the Administrative Court dismissed the lawsuit referring to point 7 of paragraph 1 of article 96 of the RA Code of Administrative Court Procedure, which means the Court decided that the dispute had actually expired.

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<sup>5</sup> In May of 2016 Jermuk was finally listed as a community affected by the Amulsar mine when Lydian International presented the Environmental and Social Impact Assessment.

### ***The appeal***

The claimant appealed the decision of the Administrative Court in the Court of Appeals insisting that the subject of the claim was to oblige the defendant to conduct audits, which meant that the dispute could be deemed expired only in the case if the audits had been carried out, whereas the audits were ordered but not conducted. The Court of Appeals rejected the complaint on 23/Feb/2016. The claimants then appealed to the Court of Cassation. On 08/Jun/2016, the Court of Cassation refused to take the case into proceedings that the justification in the complaint was not sufficient for concluding to take the appeal into proceedings in accordance with point 2 of paragraph 1 of article 161 of the RA Code of Administrative Court Procedure. To this date, the audits foreseen by the № 000115 Order of the RA Minister of Nature Protection have not been conducted.

## **4. Administrative Case № VD1049/05/15<sup>6</sup>**

### ***The claim***

Tehmine Yenoqyan and a group of citizens /total of 11 people/, Ecological Right NGO and Ecodar NGO brought a lawsuit to the RA Administrative Court against the RA Ministry of Nature Protection, RA Ministry of Energy and Natural Resources, and the Expert Committee on the Preservation of Lake Sevan of the RA National Academy of Sciences demanding:

- “1. To recognize the affirmative conclusion issued to the Plan of the Gold-Bearing Quartzite Mine of Amulsar developed by Geoteam CJSC during the 24/Sep/2014 meeting of the RA Academy of Sciences Expert Committee on the Preservation of Lake Sevan as illegitimate.”*
- 2. To annul expert conclusion № BP76 on environmental impact issued by the RA Ministry of Nature Protection on 17/Oct/2014.*
- 3. As consequence, annul [a number of administrative acts are listed] of the RA Minister of Energy and Natural Resources.”*

### ***The decision of the court of first instance***

By the 09/Apr/2015 decision of the Administrative Court judge, the lawsuit was rejected with respect to its first two demands. The reasoning of the Administrative Court concluded that the opinion of the Expert Committee on the Preservation of Lake Sevan of the RA National Academy of Sciences, and the expert conclusion № BP76 on environmental impact were deemed as expert conclusions in accordance with article 45 of the RA Law on Fundamentals of Administrative Action and Administrative Proceedings and are therefore evidence in administrative proceedings. Based on this provision, the Administrative Court concluded that with this respect the lawsuit was not subject to hearing in court and rejected to admit the lawsuit based on point 1 of paragraph 1 of article 80 of the Ra Code of Administrative Court Procedure.

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<sup>6</sup> A part of the lawsuit is currently in the process of examination.

### ***The appeal***

The decision was appealed by the claimants in the RA Court of Appeals. According to the claimants, the Court was not supposed to assess the title of the document but its contents and legal consequences. The claimants referred to article 1, 2<sup>nd</sup> paragraph of article 6, and article 32 of the RA Law on Environmental Impact Assessment and Expert Examination, as well as article 9 of the Aarhus Convention. Claimants also reminded that Administrative Case № 3275/05/09 had also challenged the conclusion of the environmental expert examination, and the courts did not consider that the issue was a matter not subject to hearing by them. Nevertheless, the Court of Appeals rejected the lawsuit on 12/Jun/2015.

The claimants appealed the decision of the Administrative Court in the RA Court of Cassation, which, on 22/Jun/2015, declined to take the appeal into proceedings with the reasoning that the justification stated in the appeal was not sufficient to admit for trial in accordance with point 2 of paragraph 1 of article 161 of the RA Code of Administrative Court Procedure.<sup>7</sup>

Currently, administrative case № VD1049/05/15 is in proceedings at the Administrative Court only for the part that is related to the dispute of a number of administrative acts adopted by the Minister of Energy and Natural Resources with regards to the Amulsar gold-bearing quartzite mine. After the rejection of the first two demands, the claimants were forced to change their third demand as well, which was initially presented as a demand stemming from the first two ones. The claimants currently demand:

“To recognize as null and void the Decree №188-A adopted by the RA Minister of Energy and Natural Resources on 11/Nov/2014, permission № ShATV-29/245 issued by the RA Minister of Energy and Natural Resources on 12/Nov/2014 and reformulated on 26/Sep/2012, the modification of the mining act № LV-245 of 26/Sep/2012 implemented on 12/Nov/2014, Decree №286 of the RA Minister of Energy and Natural Resources on the Expansion of the mining site and Modification of Permit Validity Period, the modification in the reformulated mining act № LV-245 done on 25/Nov/2014 in accordance with Decree №286, as well as the modification in the reformulated permit № ShATV29/245 done on 29/Nov/2014 by the same Minister.”

## **Property Disputes**

In each of the 10 suits listed below, after exhausting all domestic remedies, the defendants applied to the European Court of Human Rights (ECHR). The cases were submitted referencing to article 8 of the European Convention for the Protection of Human rights and Fundamental Freedoms (right to respect for private and family life), and article 1 of Protocol 1 (right to peaceful enjoyment of property). The cases were the following:

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<sup>7</sup> A communication has been submitted to the Aarhus Compliance Committee with this regard. The Communication was deemed admissible and the government was invited to submit its comments to the Committee.



1. Teghut CJSC vs. Mher Levon Alikhanyan, Civil Case № LD/1352/02/08;
2. Teghut CJSC vs. Levon Ashot Alikhanyan, Civil Case № LD/1239/02/08;
3. Teghut CJSC vs. 1. Levon Ashot Alikhanyan, 2. Rima Artavazd Meliksetyan, 3. Artsrun Levon Alikhanyan, 4. Ashot Levon Alikhanyan, Civil Case № LD/1336/02/08;
4. Teghut CJSC vs. 1. Hrant Yervand Harutyunyan, 2. Tamara Aghasi Petrosyan, 3. Hrachik Hrant Harutyunyan, 4. Tina Hrant Harutyunyan, Civil case № LD/1193/02/08;
5. Teghut CJSC vs. 1. Rusayel Shakar Mashinyan, 2. Zhenik Misak Mashinyan, 3. Shakar Rusayel Mashinyan, 4. Varazdat Rusayel Mashinyan, 5. Lianna Robert Ramazyan, Civil Case № LD/1276/02/08;
6. Teghut CJSC vs. 1. Volodya Makar Parsadanyan, 2. Lusine Volodya Parsadanyan, 3. Seda Nikolay Parsadanyan, Civil Case № LD/0192/02/09;
7. Teghut CJSC vs. 1. Zhora Levon Ramazyan, 2. Arkadi Zhora Ramazyan, Civil Case № LD/0593/02/09;
8. Teghut CJSC vs. 1. Vardan Yurik Vardanyan, 2. Marine Hakhverdyan, 3. Vahe Vardanyan, 4. Armine Vardanyan, 5. Ani Vardanyan, Civil Case № LD2/0239/02/08.

(Communication with the above-mentioned 8 cases is finished at the ECHR and judgements are expected)

9. Teghut CJSC vs. Never Seryozha Hobosyan, Civil Case № LD2/0239/02/08;
10. Teghut CJSC vs. Spartak Boshyan, Civil Case № LD/1250/02/08;

(These two cases were submitted to the ECHR later than the others. No communication has been held with the RA Government regarding these cases yet)

## Labor Disputes

The cases set out below concern a range of issues, including financial claims following the death of an employee, claims relating to dismissal of employees, as well as claims concerning correct registration of length of service.

### 1. Case №KD0335/02/10

The essence of the case was the following: Anahit Minasyan, one of the claimants, is the wife of Manuk Suren Minasyan, an employee of ACP CJSC. On October 30, 2008, Manuk Minasyan died due to an accident at the Alaverdi mine. The commission conducting the technical examination of the causes for the fatal accident concluded that the cause of the accidents was the disruption of the geological structure under mechanical pressure, which resulted in exfoliation within the contact of waste rocks and minerals. The wife had demanded to be paid a monthly sum of 122,000 drams for the loss of the breadwinner. The other claimant, Artyom Minasyan, requested that the company be ordered to pay 780,000 drams for the costs related to the construction of the grave and burial fees.

The reasoning behind partially rejecting the demand for reimbursement of funeral costs had to do with the fact that the claimants were not able to prove the corresponding expenses,

whereas according to article 48 of the RA Civil Procedure Code, the responsibility for proving the level of the damage rests with the claimant.

As for the compensation demanded for the loss of the breadwinner, the Court noted, “The fact of being disabled and under the care of the deceased is confirmed through a judgement rendered by court, and the statement on being under care issued by the head of the community may not be deemed as evidence in this case. Therefore, the claim of Anahit Minasyan is subject to rejection based on the aforementioned reasoning.”

## 2. Case № LD2/0062/02/11

The essence of the case in brief: claimant Manya Andreyan had worked at Armenian Copper Programme CJSC as an accountant in the financial and economic department. The administration of the company had fired M. Andreyan based on paragraph 1 of article 122 and paragraph 6 of section 1 of article 113 of the RA Labor Code because material damage was caused to the company in the course of the implementation of her labor obligations. The claimant had demanded to reinstate her in her previous job insisting that that neither the order of her termination, nor any other document stated that the nature of the damage caused to the company, what sorts of mistakes on her part had led to the damage and what exactly was her fault, be it intentional or a result of negligence.

The First Instance Court of General Jurisdiction of Lori Region upheld the claim on 06/Jun/2011. The Court decided, “To uphold the claim of Manya Yervand Andreyan against Armenian Copper Programme CJSC. To annul the 01/Mar/2011 order №009-A/K of the Director of the Armenian Copper Programme CJSC and reinstate Manya Yervand Andreyan in here previous position as an accountant of the financial department. The verdict of the court was not appealed and has entered into legal force.

## 3. Case № LD2/0168/02/11

The essence of the case in brief: claimant Manya Andreyan had informed the Court that she used to work as an accountant in the financial department of the Armenian Copper Programme CJSC. Her monthly salary was 120,000 drams. The administration of the company fired her on 01/Mar/2011 based on Order № 009 A/K. On June 6, 2011, the First Instance Court of General Jurisdiction of Lori Region upheld her claim on being reinstated in her previous position.<sup>8</sup>Based on Order №037-A/K of the defendant on 09/Jul/2011, Manya Andreyan was reinstated in her previous job but the company failed to pay her salary for the period of her forced absence. On July 11, 2011, one month after she was reinstated in her job, guided by article 194 and paragraph 3 of article 105 of the RA Labor Code, the company issued order №004T establishing a new payment condition for her with the rate of 32,500 drams.

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<sup>8</sup> See the case described previously.

The claimant had based her petition on article 265 of the RA Labor Code, according to which if it is established that the working conditions were changed, the employee was suspended from work without a valid reason or in violation of defined order, then the violated rights of the employee must be restored and he must recover the average work pay for the entire time period the employee was in idle position, or difference of the wage for that period, during which the employee was employed in a lower paid job, except for the case established in paragraph 2 of the present Article. The average wage is calculated through multiplying the amount of the average daily wage of the employee with the number of corresponding days. Since the average daily wage was 9488 drams, which when multiplied with the number of days between the days she was fired (01/Mar/2011) and the day she was reinstated in her job (11/Jul/2011), is 826,896 drams (for 95 days). The claimant had asked to instruct Armenian Copper Programme CJSC to pay this amount to her.

Armenian Copper Programme CJSC brought a countersuit against Manya Andreasyan requesting that she be ordered to pay the company 446,195 drams as compensation for her mistakes, fraud and money received as a result of her other intentional actions, and offset the remaining 561,053 drams along with the amount payable to M. Andreasyan. The company claimed that during her employment by the latter Manya Andreasyan had caused damage to the organization through allocating extra amounts to herself and failing to carry out certain taxation liabilities thus amounting to a total of 1,322,825 drams damages. As evidence for their claim, the company had submitted forensic accounting examination report №12-1915, Act №1 of 03/Oct/2011 on the outcomes of the review of payment documents and calculation of wage for accounting department employee Manya Yervand Andreasyan, the annex of the visitation register of the Armenian Copper Programme CJSC for 2009, 2009 and 2010.

On 23/Apr/2014, the First Instance Court of General Jurisdiction of the Region of Lori ruled: "The claim of Manya Yervand Andreasyan against Armenian Copper Programme CJSC for the payment of 862,896 drams due to forced absence from employment, and for annulling Order № 004T of 11/Jul/2011 is upheld partially. Order №004S issued on 11/Jul/2011 issued by the Armenian Copper Programme shall be deemed null and void. Armenian Copper Programme CJSC shall pay Manya Yervand Andreasyan a sum of 561,053 drams as payment for the period of forced absence. The claim for the remainder of the claim shall be rejected.

The countersuit of the Armenian Copper Programme CJSC against Manya Andreasyan for reimbursing the surplus of 446,195 drams she gained due to her mistakes, fraud and other intentional activities, and offsetting the remaining 561,053 drams, as well as leaving the expenses for the civil case brought by Manya Andreasyan to be covered by her, was upheld. Manya Andreasyan was instructed to pay the Armenian Copper Programme CJSC a sum of 991,966 drams for damages.

The 561,053 drams to be paid by the Armenian Copper Programme CJSC to Manya Andreasyan after the first lawsuit was to be offset from the 991,966 drams awarded to the Armenian Copper Program CJSC to be paid by Manya Andreasyan, thus instructing Manya Andreasyan to pay the Armenian Copper Programme CJSC a sum of 426,006 drams.”

The decision was appealed by the claimant at the RA Court of Court of Appeals and was rejected by the latter on 08/Jul/2014. The claimant then appealed to the Court of Cassation, which denied to take the case into proceedings on 22/Oct/2014.

4. A number of cases (SD/0103/02/13, SD/0516/02/13, SD/0176/02/14, SD/0011/02/16, SD/0045/02/15) in which citizens had brought lawsuits against the Zangezur Copper Molybdenum Combine (ZCMC) CJSC demanding to instruct the company to make corrections in the work books.

The citizens noted in their claims that they worked for certain periods at ZCMC in such positions that ensured the right to pensions with privileges, but their work books have different records in them. They asked the ZCMC to make the relevant corrections in the work books but were denied.

Applying article 14 and 90 of the RA Labor Code in force at the time of the commencement of the legal relationship between the parties /adopted on 09/Nov/2004, entered into force on 21/Jun/2005/, the Court upheld all the claims. None of these verdicts has been appealed.

In case №SD/0501/02/12, the claimant had brought the same suit to the Court but later withdrew it.

## Decisions by the Constitutional Court

Two decisions of the Constitutional Court are analysed below: one concerning the Aarhus Convention, the other concerning the Administrative Procedures Code.

### 1. 26/Dec/2000 Decision № SDV-269 of the Constitutional Court

With this case the Constitutional Court had taken up the issue of determining the compliance of the Aarhus Convention with the Constitution of the Republic of Armenia. The Court ruled that the Convention did comply with the RA Constitution. Among other grounds, the Court has noted the following in its reasoning:

“The nature of the [aforementioned] obligations undertaken by the Republic of Armenia by joining the Convention stems from the requirements of articles 1, 4, 8, 10, 24, 34, 38, 39, and 40 of the RA Constitution as they are meant to ensure the application of the fundamental constitutional principle of rule of law, democracy and sovereignty of the Republic of Armenia, protection of human rights and freedoms in accordance with the principles of international law and standards, safe implementation of the right to property for the environment,

protection and reproduction of that environment, and rational use of national resources, as well as the implementation of the right to free speech, including the right to seek, receive and disseminate information, and protection of the right to health. The obligations set by the Convention are meant to ensure the implementation of the right to judicial protection in cases of violations of an individual's rights and freedoms, as well as the right to receive legal assistance for such purposes."

## 2. Constitutional Court Decision № SDV-906, 07/Sep/2010

This was a case brought by the Helsinki Citizens' Assembly Vanadzor Office NGO challenging the compliance of the word "their" after the word "violation" in paragraph 1 of section 1 of article 3 of the RA Administrative Procedures Code with the RA Constitution.

The Constitutional Court ruled that the term did comply with the Constitution. At the same time, in its decision, the Constitutional Court introduced the below-mentioned statements, which were later widely used by the RA Court of Cassation and the Administrative Court while setting restrictions for the rights of NGOs to apply to court. The Constitutional Court stated:

*"The results of the review of international practice of the right to apply to court for the protection of others' rights in administrative court proceedings (action popularis) have shown that in European countries this institution does not usually have full application in its classical sense. At the same time, the Constitutional Court acknowledges that in a number of countries the main standard for the authority to bring such an administrative suit is the "legal concern." The latter has received such a wide range of interpretation in judicial practice that public organizations or other unions guided by civil initiatives and acting in a manner defined by law have the opportunity to protect the collective rights of a certain group if that protection is in the frameworks of objectives of the given union. Such a position has essentially been expressed in the judicial practice of the Republic of Armenia. Particularly, in its VD/3275/05/08 decision adopted on 30/Oct/2009, the Court of Cassation has stated the following legal position: Ecodar Environmental NGO is a "concerned" organization in the sense of the Aarhus Convention, and therefore has the right to judicial protection related to environmental issues stemming from its statutory purposes."*

*The Committee of Ministers of the Council of Europe also addressed the issues of judicial protection of collective legal interests and rights of public organizations or other unions. According to the 15/Dec/2004 Recommendation (2004)20 of the Committee of Ministers of the Council of Europe on Judicial Review of Administrative Acts, Council of Europe member states encourage taking into proceedings the issue of whether the access to judicial review should be guaranteed also for those unions or other individuals or bodies, who are competent to protect collective or community interests.*

*In all cases the basic approach is that without a legal concern, action popularis should be excluded.*

*The Constitutional Court states that for the purpose of implementation of functions of non-governmental organizations in a civil society, as well as for the effective improvement of public control over national and local self-government through non-governmental organizations, future legislative developments must take place while taking account the aforementioned legal positions.”*

As it was visible from cases presented in the previous sections of this report, in its decision of 01/Apr/2011, the RA Court of Cassation had made a reference to this exact decision by the Constitutional Court in order to justify the lack of competence of NGOs to appeal to appeal to courts with environmental issues. However, the review of this decision by the Constitutional Court shows that it does not contain any statement that implies this restriction. On the contrary, the Constitutional Court of Armenia concurs with the following legal statement made by the Court of Cassation in its 30/Oct/2009 decision for case № VD/3275/05/08: *“Ecodar Environmental NGO is a “concerned” organization in the sense of the Aarhus Convention, and therefore has the right to judicial protection related to environmental issues stemming from its statutory purposes.”*

## Rulings by the European Court of Human Rights

The main focus of this section is a series of cases stemming from environmental pollution, where it has been found that citizens’ rights under article 8 of the Convention (right to respect for private and family life) had been violated. Whilst these cases do not concern Armenia, they nevertheless represent a precedent.

1. The ECHR verdict on 09/Dec/1994 for the case of Lopez Ostra vs. Spain concerned a Spanish citizen who insisted that she was being affected by the activities of the liquid and solid wastes plant that was built close to her home in 1988. Mrs. Lopez claimed that since the moment of operation of the plant, the billowing toxic steam has led to the deterioration of her and other district residents’ health, as well as have caused serious inconveniences for them. Local authorities first evacuated the residents of the area and later, on 09/Sep/1988, they stopped the work of a number of production units of the plant. The claimant was insisting that articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention on Human Rights had been violated.

The ECHR ruled that there had been a breach of article 8 because, ***“Naturally, severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”*** In other words, the European Court of Human

Rights set a precedent of considering cases of environmental pollution in the framework of Article 8 of the Convention. The Court then addressed paragraph 2 of the article in order to clarify whether the authorities were in compliance. With this respect, the Court stated in its judgement: “The Court notes, however, that the family had to bear the nuisance caused by the plant for over three years before moving house with all the attendant inconveniences. They moved only when it became apparent that the situation could continue indefinitely and when Mrs. Lopez Ostra’s daughter’s pediatrician recommended that they do so. Under these circumstances, the municipality’s offer could not afford complete redress for the nuisance and inconveniences to which they had been subjected. Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the town’s economic well-being - that of having a waste-treatment plant - and the applicant’s effective enjoyment of her right to respect for her home and her private and family life.”

As a result, the ECHR ended up recognizing a violation of Article 8 of the Convention and defined an obligation for the State to provide compensation for the moral and material damage caused to the claimant.

However, the Court found no violation of Article 3 of the Convention.

2. The ruling for the case of *Giacomelli vs. Italy* on 12/Nov/2006 involved an Italian citizen who claimed that the State had violated her rights under Article 8 of the Convention. She had described that 30 meters away from her house there was a plant for the storage and treatment of special waste classified as either hazardous or non-hazardous. The Lombardy Regional Council first granted an operating license for the plant in question in 1982, after which the plant was allowed to significantly expand the volume of processed waste. The operations of the plant included detoxification of hazardous wastes, during which the wastes were being processed in laboratories with chemicals. On 21/Sep/1993, local health experts found that the statutory limits had been exceeded for certain substances. On 08/Mar/1995, a deposit of white dust was found in the plant, and a number of storage areas for toxic materials were in the area of the plant without being neutralized, etc. **In addition, the claimant had reported that according to domestic legislation, environmental impact assessment was an essential prerequisite for the operation of the plant, whereas such an assessment had been conducted only several years after the plant’s launch.**

In this case, the Court first referred to its ruling in the case of *Lopez Ostra vs. Spain* (see above) regarding the applicability of Article 8 of the Convention. Then a reference was made to paragraph 57 of the judgement for the case “*Guerra and others vs. Italy*,” where it was stated that: *The direct effect of the toxic emissions on the applicants’ right to respect for their private and family life means that Article 8 is applicable.*

The court also brought the following significant justification: *“Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private-sector activities properly. Whether the case is analyzed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants’ rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention.”*

For this case the Court recognized a violation of Article 8 of the Convention and obliged the government of Italy to compensate the moral and material damages caused to the claimant.

3. The ECHR made similar rulings in these cases: *Dubetska vs. Ukraine* on 18/Jan/2011, *Fadeyeva vs. Russia* on 09/Jun/2005, *Ledyayeva, Dobrokhotova, Zolotareva and Romashina vs. Russia* on 26/Oct/2006.

Judging from the above-mentioned, we can conclude that in certain cases when environmental pollution directly influences an individual’s private and family life, the ECHR considers those cases in the framework of Article 8 of the European Convention on Human Rights.

It is worth noting that even when environmental cases have passed through all domestic judicial instances and the claimant insists that the court proceedings were not fair, the ECHR does not view this in the scope of Article 6 of the Convention (right to a fair trial), considering that the issue does not concern **civil** rights.

In one of the previous chapters, we had noted that 10 cases with relation to the Teghut mine have been filed with the ECHR based on violations of paragraph 1 of Article 6 of the Convention and Protocol 1. For 8 of these cases the communications have already been finished, which means that the Court did not find the claims inadmissible. However, this approach has to do with the issue that the cases refer to seizing lands from citizens for national needs, which is considered a civil right. In short, these cases are basically not of environmental nature, and for that reason they are related to Article 6 of the Convention.



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The Mining Legislation Reform Initiative (MLRI), a project of the AUA Center for Responsible Mining, is made possible by funding from the Tufenkian Foundation

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