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“ECOLOGICAL RIGHT”

ENVIRONMENTAL

NON-GOVERNMENTAL ORGANIZATION

Ք. Երևան, Սարի Թաղ 7-րդ փ., 67շ., 7 բն.

Հեռ. +37491451320

e-mail: art.grigorian@gmail.com

Str. 7 Sari Tagh, house 67 apt. 7, Yerevan

Tel: +37491451320

e-mail: art.grigorian@gmail.com

Alleged legal infringements of gold quartz mining in Amulsar: judicial proceeding and international complaints

The overview

Lydian International’s Amulsar gold mine project is going to be implemented in the central Armenia, at the water catchment area of specially protected Lake Sevan and other strategic water resources. The endangered biodiversity species are under the risk of elimination, as a result of the project. The EBRD has equity in the project so operational risks in Amulsar will translate in financial risks for the EBRD.

Currently the Amulsar mining permit, issued in 2014, is being litigated in the Armenia’s Administrative Court. The two environmental NGOs and more than ten members of affected Gndevaz community of Armenia filed a lawsuit against Armenian government arguing the legality of Social and Environmental Impact Assessment (SEIA) expert conclusion and other permitting documents, allocated after the expert conclusion. At current stage of judicial proceeding the plaintiffs demanded the court to initiate an alternative independent expertise on the most critical impacts of Amulsar, namely water and biodiversity. The court allowed the plaintiffs to present expert opinions concerning these issues, to dispute the position of state environmental experts. In fact, if the Administrative Court rules that state environmental expertise was done in a violation of legislation, the implementation of the project will be terminated, as the mining permit was allocated based on the SEIA expert conclusion, in breach of national legislation.

At the same time, a Communication is launched by the Aarhus Convention Compliance Committee of the UN Economic Commission for Europe (UNECE), arguing the relevance of water and biodiversity assessment matters of state expertise of the SEIA. It will result in international measures applied to the Armenian government with regards to compliance of state environmental expertise to the international commitments set up by the Aarhus Convention.

In 2015 the Project Complaints Mechanism of the EBRD refused to conduct a Compliance Review and investigate mining impact arguing that the EBRD only invested in exploration, but not mine development.

Independent expertise

Pursuant to the Ruling of Armenia's Administrative Court of 09.04.2015, the SEIA Expert Conclusion followed by the state environmental expertise is just an opinion of specialists but not a permitting administrative act and does not directly generate legal consequences¹. The court's findings on the issue of legal meaning of the SEIA conclusion significantly affected administrative practice, as the Ministry of Nature Protection has already referred to the mentioned findings as its official position to a request of information². To sum up, the main resume of the Court's Ruling is that SEIA Expert Conclusion is not an administrative act but just an opinion of experts, which means that other independent experts have the same liabilities to present their own conclusions during the litigation, if any. The interim ruling of the court was disputed at the Aarhus Convention Compliance Committee, which discussed the admissibility of the Communication on the issue brought by the environmental NGO "Ecological Right" in its 53th in June 2016 meeting and found it admissible³.

Therefore, the Court's Ruling factually means that state environmental expertise is not the exclusive liability of state body and consequently, the Affirmation of the Expert Conclusion is not legally binding act but just opinion of specialists, so the mining awarding will be legally vulnerable and will become the subject of conflicts and litigations.

Legal violations litigated in the court:

The issues of impact on Lake Sevan and underground water resources, as well as impact on biodiversity are the main topics of independent expertise. Several laws regulate mentioned issues, among which are the Law on Lake Sevan and the Law on Flora.

According to Article 3 of the RA Law on Lake Sevan, the Kechut and Spandaryan reservoirs, as well as the catchment basins of Rivers Arpa and Vorotan all the way up to the Ketchut reservoir belong to the catchment basin of Lake Sevan.

¹ The Decision of the RA Administrative Court VD/1049/05/15.

² Official written answer of the RA Ministry of Nature Protection to the Environmental Non-Governmental Organization.

³ Official website of the UN Economic Commission for Europe (<http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/preacccc2016138-armenia.html>)

Article 10 of the Law on Sevan Lake states that “Any kind of activity prone to damage the ecosystem of Lake Sevan is prohibited in zones of central, direct and indirect impact”. The following activities are forbidden in the zone of direct impact:

- a) Application of ecologically harmful technologies that generate emissions and wastewater exceeding the identified permitted norms;
- b) Production, utilization, storage and installation of radioactive materials and waste matter, as well as those of other materials that are hazardous or toxic to the environment and human health;
- c) Allocation of ore processing objects;
- d) Exploitation of thermal energy sources with the capacity of over 10 megawatts operating on the basis of coal and liquid fuel.”

One of the matters of independent expertise is the impact of Amulsar project on water resources, which was not properly assessed during the state expertise. During the discussions of the water impact issue with independent experts it was obvious that unlawful influence on water resources is unavoidable.

Article 17 of the RA Law on Flora states that “Any form of activity resulting in the reduction of the number of animals registered with the Republic of Armenia Red Book or deterioration of their areas of occupancy shall be prohibited.”

Data provided by WWF-Armenia asserts that the occupancy area of one particular sort of plant, the *Potentilla porphyrantha*, as well as two species of reptiles, 18 species of birds and 4 species of mammals are within the map of the Amulsar project.

The Environmental Impact Assessment (EIA) of Amulsar also stresses that the project area has inhabitants registered in the Red Book. Migration routes of a number of animal species cross through the area (Armenian Mouflon or the Iranian red sheep, leopard, Bezoar ibex and other animals, most of which are registered not in Armenia’s but rather in the international red book).

One more independent expertise shall be done to reassess the impact on endangered biodiversity in the area of project implementation In line with common opinion of specialists, the open-cast mining project of Amulsar is in direct contradiction with the RA Mining Code, RA Law on Flora and RA Code on Fauna as the area of interest includes species of plants and animals registered in Armenia’s Red Book. The restricting provisions within the aforementioned legal acts are of imperative nature and do not foresee any exceptions or conditions.

Project-related legal amendments caused by the EBRD-financed Amulsar mining project

On 31 July 2014, less than a month before the main public hearings on Amulsar mine in Gndevaz village of Armenia on 25 August 2014, the RA government adopted Decree No. 781-N on “Establishing the procedure of utilization of items of flora for their protection and reproduction in natural conditions”, which allows transfer the rare and endangered species of biodiversity to other places unlawfully overcoming the provisions of current Mining Code and other environmental laws, which prohibits exploitation of mine in the areas where those species grow⁴.

The mentioned regulation was adopted with a flagrant violation of Article 26 of Armenia’s Mining Code, as well as the Article 17 of the Law on Flora. In fact, the mentioned Decree was adopted to overcome the legal barrier, which prohibits mining activity in the areas, where endangered species of flora are grown. It is a matter of serious corruption risk when mining laws are amended to serve the needs of a private project. At the same time, this manner of legal amendments undermines the mining project and investments on it, as the governmental decree has lower legal force than the Law on Flora and the Mining Code. **In case of judicial proceeding the court may decide to directly use the prohibiting regulation of Laws instead of the Decree.**

With another Decree N. 244-N adopted by the government on 10 March 2015, Lydian International company was allowed to save more than 100 million USD just changing the technical parameters of mining operations⁵. Some specialists estimate this decision as corrupt, since the amendment was adopted to reduce the taxation obligations of one mining company, which obtained the permit to exploit the Amulsar mine, mentioned above.

In a favor of the Amulsar project public officials have influenced the regulatory framework of the mining sector for the benefit of the mining company against the public interest.

By frequent and discretionary regulatory interference the government has influenced the decision making process crucially. Such discretion negatively affects on human rights, as people who will be influenced by the awarding decision. People of affected communities will suffer from abuse of liabilities of public officials who support private gain of the mining companies against public interest.

⁴ Government Decree 781-N from 31 July, 2014 and analytical article of Investigative Journalists. (<http://hetq.am/eng/news/57011/armenian-environmentalists-in-uproar-over-government-plan-to-replant-endangered-flora-at-amulasr-gold-mine.html>).

⁵ Government decree of 10 March, 2015 and the article explaining the negative aspects of that issue in the webpage of Pan-Armenian Eco-Front 27.05.2015.