

Name: Save Teghut, This City Belongs to Us, Our City, Trchkan and activists of Mashtots Park Movement

Country: Armenia

Date of submission: 16/06/2012

Question 2

RA Law on the Legal Regime of State of Emergency, adopted on the 21st of March, 2012

a) From Article 1 of the bill, which bears the title “State of Emergency and Grounds for Declaring a State of Emergency”, it is not clear what the nature and source of the circumstances and threats, which can be a basis for declaring a State of Emergency, are. The ambiguity of the legal norm will give relevant bodies the possibility to interpret the norm in an arbitrary manner and to declare a state of emergency in any political situation which is not beneficial for them. Such a situation could arise, for instance, if environmentalists were to hinder the exploitation activities of a mine which was causing disproportionate damage to the environment (e.g. exploiting the mine at Teghut), since mining facilities are in the list of Special Importance Facilities.

b) With regard to the Constitution, Article 9 (“The Measures and Forces Ensuring the Legal Regime of the State of Emergency”) is more problematic. The first part of the Article allows the use of forces and resources of state authorities of the police, defense and national security, during State Emergencies. Moreover, part 3 of Article 9 stipulates that for the purpose of resolving the issues listed in part 2 of the same article (with the exception of the prevention and banning of mass events) the RA Armed Forces can also be called in.

In the Law the phrase “resources and forces of the state defense authorities” is used, which, taking into account its content, means none other than the Army. Apart from the Army, the Defense Ministry does not possess any other force or resource. The RA Armed Forces is comprised predominantly of the army, plus the border troops of the National Security Service and the internal troops of the RA Police.

Article 8.2 of the Constitution declares that “The RA Armed Forces ensure the security, protection and territorial integrity of the RA and the inviolability of its borders. The Armed Forces are neutral in political issues and are under civic surveillance.” The Constitution does not contain any other clause or norm on the use of RA Armed Forces. Thus, a content analysis of the Constitution demonstrates that:

1. The role of the RA AF is protecting the Republic of Armenia from external encroachment.
2. The constitution envisages that in 3 cases the RA AF can be used: armed attack on Armenia, a direct threat of such an attack or a declared war, and only under one condition: declared martial law.

Thus, all the clauses and articles of the Law on the Legal Regime of State of Emergency, which envisage the use of AF in case of State of Emergency, are blatantly unconstitutional.

Question 3

Article 316 of the RA Penal Code

According to Article 316 of the RA Penal Code, the following is a crime:

“An act of violence or threat of violence, which is not a hazard to human life or health, against a representative of the State or their relatives, carried out in relation to the performance of their official duties, as well as hindering a State representative in the execution of their duties”.

This clause is excessively generalised, does not contain clear standards for assessing the situation and in practice is being used against peaceful demonstrators and human rights defenders in situations where the police use excessive force but subsequently, false criminal charges are brought against demonstrators and human rights defenders. With the same scenario criminal proceedings have been initiated against activists protecting the Mashtots Park in Yerevan from illegal construction. 7 of them were taken to the police station for “hindering the activities of the police”.

Question 4

Limiting Access to Justice for NGOs trying to fulfill their statutory Objectives

Armenia has a Law on NGOs. Article 15 of the Law states that an NGO has a right “to represent and protect, in accordance with the law, its rights and legal interests and the rights and interests of its members in other organisations, in courts, state and local self-governing bodies”.

According to article 52 of the RA Civil Code, “a legal entity can have civil rights corresponding to the objective of activities envisaged in its founding documents, and can bear responsibilities related to those activities. The rights of a legal entity may be limited only in cases envisaged and according to procedures set by law. A legal entity can contest the limitation of its rights in courts”.

In 2001 Armenia ratified the Aarhus Convention, which envisages the public’s right to participation in decision-making related to the environment, and the right to access to justice. According to Article 2 of the Convention, “the public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”.

By virtue of Article 6 of the Constitution and Articles 5 of the Law on International Conventions, the Aarhus Convention is directly applicable in the territory of Armenia.

Despite these clauses, court precedents on the protection of public rights demonstrate that the public has been completely isolated from the decision-making process and deprived of the possibility to contest illegal decisions in courts. This is evident from the way the court claim brought by NGOs against the exploitation of the Teghut mine and the court claim brought by RA citizens against constructions in the Yerevan Students’ Park, were processed. In both cases (Teghut case number ՎՂ/3275/05/09, Students’ park case number ՎՂ/3432/05/10) the RA Administrative Court and the RA Court of Cassation established their legal position thus: “...only a person, who thinks their rights or interests were directly touched upon by administrative measures, can seek justice by applying to the Administrative Court”, “the RA legislation provides for a right to apply to court only for people whose rights have been directly violated”. Hence, RA courts do not accept or hear claims brought by individuals or NGOs for the protection of public rights. In these circumstances the public is deprived of judicial protection of its rights and is obliged to take its own measures to protect public rights.

Thus, both imperfect legislation and legal precedents are the reasons why Armenia regularly breaches its obligations under the Aarhus Convention.