

Legal Aspects of the ‘Struggle’ for Rosia Montana

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The ‘Alburnus Maior’ NGO as well as the ‘Independent Centre for the Development of Environmental Resources’ (ICDER) are active participants of the “Save Rosia Montana!” campaign.

One of the many (and possibly one of the most important) directions that this campaign has taken, is via its legal work. The above-mentioned NGOs and other ones that campaign for the right to a healthy environment commonly attack acts and actions taken by Rosia Montana Gold Corporation to develop their mine proposal.

I. Rosia Montana Gold Corporation’s (RMGC) activities

In order to obtain all approvals, avis and administrative certificates for the mine proposal, RMGC undertook a series of steps by which it obtained necessary administrative acts from the local and national authorities. The majority of these were obtained by flagrantly violating the law or via a „*contra legem*” collaboration with the local administrative authorities.

The authorization activities for the RMGC proposal, benign as they may seem at the first glance (that is if we omit from this latest context the fact this is about exploiting the areas’ gold with the use of cyanide), were obtained in violation of legal norms in place and via continual collaboration with the local authorities.

II. Civil Society’s Reaction. Challenging, via court actions, RMGC’s complexities of projects

NGOs intervened to challenge the appearance of legality behind RMGC’s steps. Alburnus Maior and ICDER both tried to prevent the violation of rights recognized both by the Constitution and norms of Treaties and International Conventions ratified by Romania as well as laws such as those that govern our internal legislation.

Legal Framework of these Interventions

- Law Nr. 265/ 2006 which approves O.U.G. 195/2005 on the protection of the environment by art. 20, point 6.

- According to Law 86/2000 that ratifies the Aarhus Convention on access to information, public participation and access to justice in environmental problems (art. 2, alin. 4)

- The necessary measures to protect and put to value an archaeological patrimony, the measures for biodiversity conservation and other measures to create protected areas and protect the environment are *priorities in relation to private interests*. Given that they are special laws, the above mentioned legal norms derive from art. 8, paragraph 1¹ of Law Nr. 554/2004 by which each legal and physical person has the right to formulate requests by which it invokes the violation of a public legitimate interest only as a secondary request and only if the primary interest which has been violated is a private one.

Court actions with RMGC on different violations with favourable sentences for the environmental NGOs

A. General and Zonal Urbanistic Plans (PUG and PUZ) for the Rosia Montana industrial area

Premises. Via local council decisions nr. 46 and nr.47 /2002, respectively were approved in July 2002 the General Urbanistic Plan for the Rosia Montana Commune and the Urbanistic Zonal Plan for the RMGC industrial area.

Solution. After a legal struggle that lasted for about 4 years, the Court of Appeal Alba's made an irrevocable decision pronounced in the file no. 1411/107/2007, by which the Court admitted the illegality exception raised by the Alburnus Maior Association and acknowledged the illegality of these urbanistic plans. One of the reasons on which the decision was based, is that a part of the members of the Local Communal Council were employees of RMGC and voted this plan by violating the conflict of interest legislation.

In this moment, the urbanistic plans cannot be invoked against the Alburnus Maior Association.

B. The contract made between RMGC and the Local Council Roşia Montană.

Premises. On 22.06.2005, the Rosia Montana commune, considered as an administrative territorial unit represented by the Mayor, on one side, and RMGC as commercial company on the other side, signed a Collaboration Contract. Its objective was that "the terms and the conditions in which the parties reciprocally cooperate, for the development of the Project for Relocation in New Rosia Montana".

The objective of the contract was the relocation of all Public Infrastructure, Public Buildings (school, police office, hospitals, local town hall, infrastructure, roads) but also the fields and the assets privately owned by the third parties (the lands) in the Rosia Montana commune, listed in the contract in remarkable detail.

This contract, seen by parties as a commercial contract, was in fact an *administrative contract*, or a **public-private partnership contract**, according to the Governmental Decree no. 16/2002 which was applicable on 22.06.2005, the date when the contract was signed, norm which seems to be totally eluded.

The court action. This contract was challenged by Alburnus Maior who requested the court to testify the absolute nullity. Alburnus Maior claimed the followings:

1. The administrative contract took the form of a commercial collaboration contract as such avoiding the law. According to the article no. 977 Civil Code, the contract's interpretation is realised only after the commune intention of the parties is expressed, and not by following the literary sense of the terms.

2. The contract suggests that at the base of it is the mining exploitation licence held by RMGC giving it the right to carry out mining activities in the Rosia Montana perimeter. Nonetheless mining licence no. 47/1999 does not include in its limits the perimeter of the Rosia Montana commune (and even less "Piatra Alba"), but only "Cetate" and "Carnic" for which the mining licence was initially issued.

Also, the relocation project entitled the New Rosia Montana and the mining project did not receive the approval, like it is stated in the Collaboration Contract (letter O of the Preamble). Therefore, until the present time the Environmental permit for the mining project – industrial development area Rosia Montana - was not granted.

3. Rosia Montana commune obliges itself, to support **S.C. Roşia Montană Gold Corporation S.A.** in the process of obtaining all the necessary permits, authorisations and licences. **Moreover it assumes the obligation** to obtain all the necessary permits, authorisations and licences to successfully apply the Relocation Project and the Mining Project, which constitutes a flagrant violation of the local authority attributions and may be sanctioned with absolute nullity.

4. Obtaining the construction permit of public assets cannot imply that the commune loses all the rights to these assets, as it is mentioned in the Collaboration Contract (article no. 7, paragraph no. 1).

What is more, the Rosia Montana Commune, as a legal person under administrative law can not partially abandon it's capacity to sue, as stipulated in the contract under article 13 point 5 of the Collaboration Contract. This also represents a null clause of this contract.

The Verdict. With Civil Judgement no. 750/CA/29.05.2007, the Alba Tribunal ascertained that the contract is a public-private partnership, it contains null clauses and as a consequence **it was annulled**. The court motivations of the contract's annulment were the followings: the stipulations of the Governmental Decree no. 16/2002 and the establishment of the fact that this contract is a simulation and that contains absolute nulls clauses, concluding that the local authority has legal rights that cannot be negotiated in this contract.

C. The successive release of urbanistic certificates

In order to obtain an environmental permit, RMGC obtained an urbanistic certificate from the Alba County Council, during the EIA procedure.

Following the request formulated by S.C. ROSIA MONTANA GOLD CORPORATION S.A., on 27.07.2008, the Alba County Council issued the urbanistic certificate no. 105. The certificate was requested for the declared

purpose of “Permanent Construction Works, demolition works, temporary construction works for the mining industrial area”. **The first urbanistic certificate no. 68/2004**, issued for the same purpose, is also the object of a court case in administrative litigation matters, file no. 2233/2006, at the Alba Iulia Tribunal. Based on the Alba Tribunal’s court decision, the urbanistic certificate no. 68/2004 was suspended.

The second urbanistic certificate no. 78/26.04.2006 was legally challenged at the Cluj Napoca Tribunal, in administrative litigation matters, file no. 1245/117/2007. Based on the Cluj Napoca Tribunal’s decision from 27th of July, 2007 for the file no. 1245/117/2007, the urbanistic certificate no. 78/2006, was suspended, and subsequently annulled by the Cluj Court of Appeal’s irrevocable decision.

In order to better comprehend this documents succession, we will rewind in slow motion, the details of the entire story ...

1. **The urbanistic certificate no. 68/20.08.2004** issued by Alba County Council was suspended by the Alba Tribunal; this solution was maintained by the Court of Appeal Alba on 02.11.2005 until an irrevocable decision on the nullity request would be reached.

During the first certificate’s suspension by a court of justice, the Alba County Council granted ...

2. **The second urbanistic certificate no. 78/26.04.2006** – which was at his turn suspended by the Cluj Tribunal’s decision from 27.07.2007. Only a week later, as a reaction to this measure, the Alba County Council granted ...

3. Surprise..., **the third urbanistic certificate no. 105/2007** (27.07.2007) which had the exact same content as the previous two.

In this moment, the urbanistic certificate no.78/2006 is annulled via the irrevocable decision taken by the Court of Appeal Cluj in 2008.

By cancelling the urbanistic certificate no. 78/2006, the Tribunal Cluj proved that **the issue of a new urbanistic certificate in the context where the old urbanistic certificate is challenged in a court of justice, pursued the possible issue of some construct permit, even though, according to the article no. 14, paragraph 5, Romania’s administrative litigation Law presumes the existence of law elusion and also the existence of prejudice.**

Moreover, the Tribunal proves that in the plans submitted by RMGC it was mentioned the existence of a tailing pond, which even if it was not mentioned afterwards, in the request for the urbanistic certificate, the public authority should have asked for the environmental permit, as RMGC is not planning to build a water reservoir, but a tailing point necessary for the development of the mining exploitation activity.

According to the article no. 14, of Romania’s Law no. 105/2007, the Urbanistic Certificate no. 105/2007 is suspended *de iure*.

At the moment, due to the lack of an urbanistic certificate which would have legal effects, the EIA procedure started by RMGC at the Ministry for Environment, is suspended.

Conclusions. All the court cases where I represented an environmental NGO against RMGC were successfully won, thanks to the blatant law violations committed by RMGC on one hand, and the local authorities on the other hand. It is obviously that NGOS with the declared purpose to protect the cultural historical, archaeological patrimony, flora and fauna biodiversity have the right to protect these treasures against an irrational exploitation, planned only for profit.

On a long term, due to the European law implementation on the environmental protection issue, projects like RMGC's will become impossible. Therefore, it is our duty to fight until is not too late.