

File no. 1589/2005

ROMANIA
CURTEA DE APEL BUCUREȘTI (*BUCHAREST COURT OF APPEAL*)
SECTIA A VIII-A CONTENCIOS ADMINISTRATIV ȘI FISCAL (*SECTION VIII FOR
CONTENTIOUS ADMINISTRATIVE AND TAX MATTERS*)

CIVIL DECISION NO. 1587

Public hearing of 7 November 2005

The Court is formed by:

CHAIR	COSMA CARMEN
JUDGE	PAUN LUIZA MARIA
JUDGE	VOICU RODICA
REGISTRAR	MOLDOVEANU CARMEN

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The Public Prosecutor's Office attached to the Bucharest Court of Appeal was represented by prosecutor GHIDERSA ANAMARIA.

The case on the docket concerns the appeal brought by the applicant Fundația Centrul de Resurse Juridice (*Centre For Legal Resources Foundation*) against civil sentence no. 621/11.2.2005 imposed by Tribunalul București – Secția a VIII-a Conflicte de Muncă, Asigurări Sociale, Contencios Administrativ și Fiscal (*Bucharest Court – Section VIII for Labour Conflicts, Social Security, Contentious Administrative and Tax Matters*) in file 414/CA/2004 versus respondent-defendant Agenția Națională pentru Resurse Minerale (*National Agency for Mineral Resources*), respondent-applicant Organizația Neguvernamentală Mare Nostrum ("*Mare Nostrum*" *non-governmental organisation*) and respondent-intervener S.C. Roșia Montana Gold Corporation S.A.

The roll call for the public hearing is answered by appellant-applicant Fundația Centrul de Resurse Juridice, through lawyer Cătălina Rădulescu, and by respondent-intervener S.C. Roșia Montana Gold Corporation S.A., through lawyer D. Topoleanu; respondent-defendant Agenția Națională pentru Resurse Minerale and respondent-applicant Organizația Neguvernamentală Mare Nostrum are absent.

The procedure has been duly performed.

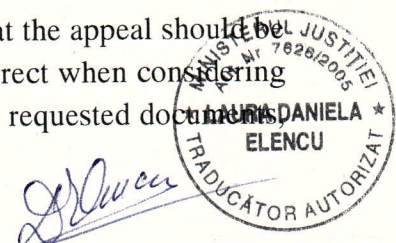
The session registrar presents the case, then:

As there are no more applications, the Court acknowledges the case to be in trial phase and opens the hearing of the appeal.

Through his lawyer, the appellant-applicant supports the grounds of the appeal and requests that the Court should admit the appeal, quash the sentence imposed by the Court of First Instance and admit the action as submitted.

Through his lawyer, the respondent-intervener S.C. Roșia Montana Gold Corporation S.A. requests that the Court should dismiss the appeal as unfounded, with the consequence that the sentence imposed by the Court of First Instance should be maintained for the reasons exposed in the defence. He does not request a return of the costs incurred.

The representative of the Public Prosecutor's Office concludes that the appeal should be dismissed as unfounded, arguing that the Court of First Instance was correct when considering that the provisions of Article 12(b) of Law no. 544/2001 – relating to the requested document



which were covered by the provisions of Article 17(i) of Law no. 182/2002 – were relevant in the case.

THE COURT,

Considering this appeal,

Having examined the documents of the file, the Court finds that:

Through the civil sentence no. 621/11.2.2005, Tribunalul București – Secția a VIII-a Conflicte de Muncă, Asigurări Sociale, Contencios Administrativ și Fiscal dismissed the action brought by applicants Fundația Centrul de Resurse Juridice and Organizație Neguvernamentală Mare Nostrum versus defendant Agenția Națională pentru Resurse Minerale and intervener SC Roșia Montana Gold Corporation SA as unfounded and admitted the application for leave to intervene in support of the defendant.

In order to hand down the above judgment, the Court of First Instance noted that the applicant, in his request of 2.12.2003, requested several concession licences for mining operations, the documentation that served as grounds for transferring the exploitation licences under Orders nos. 123/1999 and 193/2001 and information related to the mining project of S.C. Roșia Montana Gold Corporation SA.

The Court had found that the defendant's answer – stating that the concession licences did not belong to the category of public interest information – was justified, because such information belonged to the category of classified information.

In accordance with Article 17(i) of Law no. 182/2002, studies and prospecting operations are State secrets, while concession licences are restricted information in accordance with Order no. 202/2003. According to Article 12(b) of Law no. 544/2001, such information is exempted from the free access of citizens because they are concerned with the economic interests of Romania.

The Court of First Instance found that the same situation applied to the documentation that served as a basis for transferring the exploitation licences.

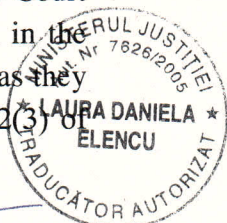
Regarding the mining project of intervener SC Roșia Montana Gold Corporation SA, the Court found that the information requested was not clearly set out and could not lead to the identification of the information.

Regarding the material damage, the Court found that they had not been proved and that a legal entity could not claim non-material damages, as there was no emotional suffering caused by the infringement of a human being's fundamental right.

The Court of First Instance found that the application for leave to intervene in support of the defendant was justified because the disclosure of the information requested could harm it; in accordance with the provisions of Article 5(4) of Law no. 85/2003, the competent authority was required to maintain the confidentiality of (and therefore not make public) the data and information transmitted by licence holders.

The applicant Centrul de Resurse Juridice brought an appeal against that sentence, criticising the solution as being ungrounded and unlawful under Articles 304 and 304¹ of the Code of Civil Procedure.

Elaborating on the grounds of the appeal, the appellant-applicant argues that the Court wrongly interpreted and applied the provisions of the law and the evidence produced in the case, both when considered that the applicants had not clearly set out their requests – as they requested documents instead of information, in the light of the provisions of Article 2(3) of



Law no. 86/2000 – and when it stated that the applicants had not identified which information they were requesting because, on the one hand, there was no established requirement for entities requesting information of public interest to identify such public information in the content of documents that were not in their possession and, on the other hand, they indicated what information they were interested in when they proved, by means of the legislative instruments they had submitted, that there was identity between the concession licences, including the related documentation, and the information that should be made public under the procedure required for issuing the environment agreement.

The appellant also argues that, according to Article 4(6) of Law no. 86/2000, the respondent-defendant public authority ought to estimate which information in the concession licences is not of public interest – it being classified information – and to separate such information from the other information, making available that part of the environment related information which can be disclosed.

Another criticism to the contested sentence refers to the non-application of the relevant law, which represented the legal basis of the appellant-applicant's claim in the case, i.e. the Aarhus Convention that Romania ratified by Law no. 86/2000.

The appellant-applicant argues that the Court of First Instance was wrong to admit a commercial company's application for leave to intervene in a contentious administrative matter, because the private interests of such company could not represent a plea in the defence of the defendant, who is a public authority.

They also argue that the information requested was not classified, as they had not requested information on the location of the precious metal deposits, which Law no. 86/2000, Article 4(6) of the Aarhus Convention expressly provide that they cannot be made public; instead, they requested information on the implementation and organisation of the mining project, which is public information. In the same way, the concession licences and the related documentation must be made public in the public consultation procedure required for issuing the environmental agreement.

The appellant also argues that, regarding the classification of the information as restricted, it did not refer to the expressly requested information, and that it was unlawful to classify such information.

He argues that his request for information related to precious metal deposits does not infringe the European legislation which constitutes the Community acquis that Romania implemented by the above-mentioned legislative instruments; instead, they are information that must be disclosed according to the Espoo Convention.

He also shows which is the public information that the respondent-defendant is competent to answer for, and that the Court of First Instance was wrong to conclude that it had no such competence. Regarding the non-material damages, the ECHR practice shows that the award of such damages is not related to the existence of damage, but solely to the infringement of a fundamental human right, which in this case is the right of access to information of public interest, in accordance with Article 10 of ECHR.

The respondent-intervener lodged a defence where he requested for the Court to dismiss the appeal.

The appeal is unfounded for the reasons below:

The appellant-applicant's argument that the Court of First Instance wrongly interpreted and applied the provisions of the law and the evidence produced is unfounded.



The Court of First Instance was correct to consider that the defendant's refusal to disclose certain information was justified with respect to the concession licences – documentation that served as a basis for the transfer of exploitation licences, studies and prospecting operations and that do not fall into the category of public information, being classified.

According to Article 20 of Law no. 182/2002 on the protection of classified information, "any Romanian natural or legal person may dispute the classification of the information, its period of classification and the way in which the secrecy level was assigned to it, with the authorities that classified such information. The dispute shall be settled under the legal terms of the contentious administrative courts."

Thus, Law no. 182/2002 institutes a procedure to follow in order to dispute the classification of information, a procedure that the appellant-applicant did not prove to have followed; therefore, the Court of First Instance was correct to acknowledge the fact that the information was classified and exempted from free access of citizens, as it concerned the economic interests of Romania.

Invoking as a ground for appeal the unlawfulness of classifying the information as "restricted information" does not comply with the requirement of Article 20 in Law no. 182/2000 related to the procedure that must be followed while complying with the provisions of Law no. 554/2004.

The appellant-applicant's argument regarding the application of the Aarhus Convention that Romania ratified by Law no. 86/2000 and the fact that the Court did not apply the above law in that case does not appear to be such as to cause the modification of the solution found by the Court of First Instance.

According to Article 4(3) and (4) of the Convention, a request for environmental information may be refused if it is formulated in too general a manner or if the disclosure would have adverse effects.

The Court of First Instance was correct to consider that some pieces of information requested were not clearly formulated and could not lead to the identification of information, and such information could be denied under the Aarhus Convention as well.

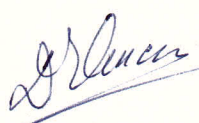

Regarding the Espoo Convention, ratified by Law no. 22/2001, according to which the information requested should also be automatically communicated, the Court finds that Article 2 of the Convention states: "The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security."

Thus, the Espoo Convention does not contradict the provisions of the above-mentioned Law 182/2002.

The appellant-applicant's criticism of the Court's admission of the application for leave to intervene in support of the defendant is also unfounded.

According to Article 49 of the Code of Civil Procedure, anyone who has an interest can intervene in a dispute arising between other persons.

The legal text does not distinguish between natural and legal persons, and even less between legal persons governed by public law or by private law, nor does it distinguish between the nature of the dispute (contentious administrative, civil, commercial, etc.).

The sentence imposed by the Court of First Instance is also lawful and grounded in dismissing the head of claim regarding the material and non-material damages, which was subsequent to the main claim for the Court to order the disclosure of the requested information. When dismissing the main head of claim, the Court also considered that there was no infringement of a fundamental right that would entail the award of damages.

Therefore, the Court finds the contested sentence to be lawful and grounded, there being no reasons to quash it under Articles 304 and 304¹ of the Code of Civil Procedure; on the grounds of Article 312 of the Code of Civil Procedure, the Court shall dismiss the appeal as unfounded.

ON THOSE GROUNDS
IN THE NAME OF THE LAW
THE COURT HEREBY:

Dismisses the appeal brought by applicant **Centrul de Resurse Juridice** against civil sentence no. 621/11.2.2005 pronounced by Tribunalul București – Secția a VIII-a Conflicte de Muncă, Asigurări Sociale, Contencios Administrativ și Fiscal in file 414/CA/2004 versus respondent-defendant **Agenția Națională pentru Resurse Minerale**, respondent-applicant **Organizația Neguvernamentală Mare Nostrum** and respondent-intervener **S.C. Roșia Montana Gold Corporation S.A.**

Decree absolute.

Given in public hearing today, 7.11.2005.

CHAIR

Cosma Carmen

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JUDGE

Paun Luiza Maria

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JUDGE

Voicu Rodica

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REGISTRAR

Moldoveanu Carmen

[Illegible signature]

Drafted by CC

Typed by CB

2 copies

21.11.2005

Tribunalul Bucuresti - S.8

Judge at first instance: Cristina Dumitru

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I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator,

