


CASE FILE NO. 59715/3/2010

*Stamp of the 9th Department for Administrative and Fiscal
Contentious Matters - Dispatching / Bucharest Court / Romania*

**ROMANIA
BUCHAREST COURT
9th DEPARTMENT FOR ADMINISTRATIVE AND FISCAL CONTENTIOUS MATTERS**

**Judgment in civil matters no. 4222
Public session from the 9th of December 2011**

**The Court composed of:
CHAIRMAN: IONUT MILITARU
CLERK: IZABELA DANIELA CHITU**

Pending the solving of the administrative contentious matter regarding the plaintiffs **"CENTRUL DE RESURSE JURIDICE" (CENTER FOR LEGAL RESOURCES)** and **"GREENPEACE CEE ROMANIA"** contradictory to the defendant **MINISTRY OF CULTURE AND CULTS** having as object the **communication of public information**.

At the roll call made in public session the plaintiffs responded by their lawyer and the defendant by its legal adviser.

The subpoena procedure has been lawfully fulfilled.

The clerk of the session made the report of the case, after which:

The court proceeds to the communication of the meeting notes submitted by the defendant at the case file.

The parties request by their representatives the allowance of the documentary evidence, which is already attached to the file.

The court consents the documentary evidence for both parties, which it ascertains as produced. There being no other requests to be formulated, exceptions to be invoked or evidence to be produced, the court gives the floor to the parties on the merits.

The plaintiffs request through their lawyer the admission of the complaint as formulated and grounded by considering the documents in the case file and the coercion of the defendant to the communication of the requested information, which is public. Free of court costs.

The defendant requests through its legal adviser the rejection of the complaint as illegal, according to the reasons set forth in detail within the statement of defense.

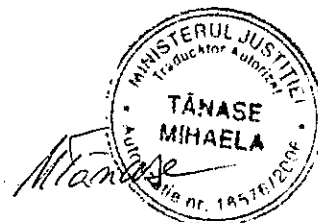
In accordance with the provisions under section 150 Code of civil procedure, the court declares the debates closed and holds back the case for solving.

THE COURT,

Deliberating on this case ascertains the following:

1. Object of the writ of summons

Through the complaint registered under no. 59715/3/2010, the plaintiffs Center for Legal Resources and Greenpeace CEE Romania have summoned the defendant Ministry of Culture and Cults to order, by means of the judgment that is going to be delivered, the coercion of the defendant to provide the public information requested by the plaintiffs on the 5th of October 2010; the coercion of defendant to pay moral damages in amount of 1 RON.



The plaintiffs have shown within the reasoning that they have addressed on the 5th of October 2010 a petition to the Ministry of Culture and Cults, by which they have requested the communication of the documentation submitted by S.C. RMGC S.A. in order to obtain a new archeological discharge certificate for the Cărnic Mountain, namely: a. Preventive archeological research report in the Cărnic Mountain Roșia Montană Romania, final synthetic document on the Roșia Montană mining project – 2009 (including the technical report for the identification of the investigated archeological site). b. Technical documentation for obtaining the technical opinion for the identification of the investigated archeological site, object of the “Preventive archeological research report in the Cărnic Mountain Roșia Montană Romania”. c. Roșia Montană mining project. Analysis of the environmental report with regard to the processes and procedure within the surface archeology Oxford Archeology, July 2009. d. Technical project of the Roșia Montană mining objective”.

The defendant communicated on the 8th of November 2010 that it cannot provide the requested information, without indicating any legal ground, and the plaintiffs consider that this refusal is illegal since the requested information is public and refers to archeological remains of national and European interest.

By law, the action was grounded on the provisions of the Law no. 544/2001.

2. Procedural position of the defendant

The defendant Ministry of Culture and Cults has formulated a statement of defense, by which it requested the rejection of the petition as ill-founded.

Essentially, it pointed out in the reasoning that the institution had proceeded in accordance with the provisions of section 7 under the Law no. 544/2001 on the free access to public information, as amended, to the formulation and transmission to the petitioner within the term of a reasoned reply, by means of the letter no. 3792/11th of Oct. 2010, issued by the Cultural Heritage Directorate within the Ministry of Culture and National Heritage, registered at the Center for Legal Resources under no. 829/8th of Nov. 2010.

Considering the provisions of section 32 under the Enforcement Guidelines of 7th of February 2002 for the enforcement of the Law no. 544/2001 on the free access to public information and of section 36 paragraph 1 under the Enforcement Guidelines dated 7th of February 2002 for the enforcement of the Law no. 544/2001 an administrative complaint should have been previously formulated.

In fact, the plaintiffs are discontent with the received reply and in our opinion they cannot claim that they haven't received an answer to their request.

By law, the provisions of section 15 and the following under the Code of Civil Procedure, the provisions of the Law no. 544/2001 on the free access to public information, as amended, as well as those under the Enforcement Guidelines dated 7th of February 2002 for the enforcement of the Law no. 544/2001 have been invoked.

3. Procedural aspects

The suit is exempt from stamp duty according to section 22 paragraph 5 under the Law no. 544/2001.

The court consents the documentary evidence for both parties.

4. On the merits of the petition

Through the petition registered under no. 3916/9th of Oct. 2010, the plaintiffs Center for Legal Resources and Greenpeace CEE Romania requested the defendant Ministry of Culture and Cults to communicate the following information:

1. The documentation submitted by S.C. RMGC S.A. in order to obtain a new archeological discharge certificate for the Cărnic Mountain, namely:

a. Preventive archeological research report in the Cărnic Mountain Roșia Montană Romania, final synthetic document on the Roșia Montană mining project – 2009 (including the technical report for the identification of the investigated archeological site).

b. Technical documentation for obtaining the technical opinion for the identification of the investigated archeological site, object of the "Preventive archeological research report in the Cărnic Mountain Roșia Montană Romania".

c. Roșia Montană mining project. Analysis of the environmental report with regard to the processes and procedure within the surface archeology Oxford Archeology, July 2009.

d. Technical project of the Roșia Montană mining objective.

2. The minutes of the first meeting of the National Commission of Archeology, as well as the list of participants at the meeting.

3. The date of the following meeting of the National Commission of Archeology for this project and if this date isn't known, its communication after its setting, as well as the list of participants and any new documentation submitted.

4. What is the preparation stage of the documentation for the inclusion of the Roșia Montană area in the UNESCO heritage?

5. If this project of including the Roșia Montană area in the UNESCO heritage is being taken into consideration by the National Commission of Archeology.

By the letter no. 829/8th of Nov. 2010, the defendant Ministry of Culture and Cults responded to the plaintiffs as follows:

1. The documentation regarding the archeological research in the Cărnic Mountain hasn't been submitted by S.C. RMGC S.A., but by the Directorate for Culture and National Heritage of Alba County. In this context, we cannot transmit this documentation because it isn't subjected to public debate, neither for a specialty committee, nor for other scientific bodies. Therewith, we communicate you that the archeological research reports represent scientific creations subject to copyright, in this respect the plaintiffs being able to address the signatories of these documentations.

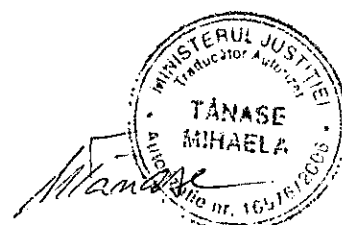
2. Regarding the request to communicate the "minutes of the first meeting of the National Commission of Archeology, as well as the list of participants at the meeting", additional specifications have been requested, considering the fact that the first historical meeting of this Commission had nothing to do with the object of the petition. At the same time, the subject Roșia Montană hadn't been included on the agenda of the last meeting of the National Commission of Archeology, which took place on the 24th of Sept. 2010.

3. The date of the next meeting of the National Commission of Archeology isn't known, it is being set depending on the necessities and the documentations submitted for analysis. It isn't known whether a subject regarding the analysis of the documentation concerning Roșia Montană will be introduced on the agenda of the meeting of the National Commission of Archeology, because the legal or debate proceedings haven't been started yet. If the legal conditions for the analysis within the National Commission of Archeology of the subject dedicated to the archeological research in the Cărnic Mountain, Roșia Montană area, will be fulfilled, then the agenda will be displayed in time on the site of the Ministry of Culture and National Heritage.

4. Regarding the question "what is the preparation stage of the documentation for the inclusion of the Roșia Montană area in the UNESCO heritage?" it has been indicated that such a project is not being drawn up by the Ministry of Culture and National Heritage.

5. A "project of including the Roșia Montană area in the UNESCO heritage" hasn't been transmitted to the National Commission of Archeology for analysis.

According to section 2 letter b under the Law no. 544/2001 on the free access to public information, public information means any information concerning the activities of a public authority or institution or that arises out of these, defined at letter a – any public authority or



institution, as well as any autonomous state-owned company that uses public financial resources, and the free access to this information cannot be restricted, according to clause 1.

In accordance with the provisions of section 22 paragraph 1 under the Law no. 544/2001, if a person considers itself injured in its rights stipulated by this law, it can make a complaint at the department for administrative contentious matters of the court in whose territorial jurisdiction it resides or in which the headquarters of the public authority or institution is located. The complaint will be made within a term of 30 days since the expiration of the term provided under section 7.

Therefore, the complaint indicated under section 32 and section 36 paragraph 1 under the Enforcement Guidelines of the Law no. 544/2001 is optional, the party being obliged to comply with the term for submitting the complaint. In this case, the plaintiffs have exerted their right, within the legal limits, to request and obtain from the defendant authority the public information and the latter had the obligation to provide the requested public information in writing or orally, according to sections 6-7 under the Law no. 544/2001, the information not being exempted from the citizens' free access.

4.1. In the case *Tătar versus Romania* (judgment dated 27th of January 2009); the European Court of Human Rights has reminded the principles applicable in the matter of observing the right to a healthy environment, indicating in the analysis of section 8 under the Convention that in the content of the obligations with a positive nature, namely of taking all reasonable and appropriate measures for the protection of the rights that the plaintiffs have on these grounds, firstly enters the creation of a legislative and administrative framework, whose objective is the effective prevention of the damages to the environment and human health.

Moreover, the decision-making process has to assume as its first goal the performance of some investigations and some appropriate studies, so that the effects of the activities that might harm the environment are prevented and assessed in advance, thus allowing the establishment of a just balance between the different competing interests involved. The importance of the public's access to these studies' conclusions, as well as to the information that allows the assessment of the threat posed to public and the possibility of the interested persons to formulate a complaint before the national courts against any decision, act or omission, if they consider that their interests haven't been sufficiently considered within the decision-making process, have also been underlined.

Or, the court apprehends that a mining project with a view to obtaining an archeological discharge certificate for the Cărnic Mountain, Roșia Montană village, Alba county – area identified by the Stereo 70 coordinates, towards the impact it can have on the environment (atmosphere, groundwater etc.), involves the observance by the authorities of some positive obligations.

Although in the letter no. 829/8th of Nov. 2010, the defendant Ministry of Culture and Cults asserted that the documentation regarding the archeological research in the Cărnic Mountain hadn't been submitted by S.C. RMGC S.A., but by the Directorate for Culture and National Heritage of Alba county, the court ascertains that this assertion is invalidated by the letter no. 3614/25th of Oct. 2010, issued by S.C. Roșia Montană Gold Corporation S.A., out of which it arises that this company had submitted the documents in questions, these being subsequently forwarded by the Directorate for Culture and National Heritage of Alba county through the letter no. 610/28th of June 2010 (f.34-35).

The Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, which transposes the Aarhus Convention in the Union's legislation (ratified by Romania through the Law no. 86/2000), aims at guaranteeing a right to access environmental information held by public authorities in favor of the citizens and enterprises, the latter having no obligation of declaring any interest.

The Directive allows the member states to provide that the petitions on environmental information may be refused, especially when disclosing this information might negatively affect

the confidentiality of the procedures carried out by the public authorities, *provided that this confidentiality is stipulated by the law.*

Obviously, the existence of an explicit rule in the national law is necessary, so that the public authorities aren't able to one-sidedly establish the circumstances in which the confidentiality is binding. This implies especially the fact that the national law clearly establishes the content of the concept of "procedures" carried out by the public authorities, which makes reference to the final stages of the decision-making processes of the public authorities.

Any public authority invoking a confidentiality of the procedures in order to refuse a petition to access environmental information must proceed to a comparative assessment of the interests at stake for each case.

In this case, the defendant Ministry of Culture and Cults didn't invoke a legal text that unequivocally provides for the confidentiality of the issuance procedures of a archeological discharge certificate, nor has it performed a comparative analysis of the interests at stake, but it has only refused the communication of the information on the grounds that the documents would have the nature of a scientific creation falling within copyright.

The court cannot apprehend the defendant's defense, enough to justify the communication refusal, because according to section 33 par. 1 under the Law no. 8/1996 the following uses of a work already disclosed to the public are permitted without the author's consent and without payment of remuneration, provided that they conform to best practices and do not contravene the normal exploitation of the work and do not prejudice the author or the holders of the rights to use: a) reproduction of a work within the framework of judicial, parliamentary or administrative proceedings or for public safety purposes.

Although the existence of some elements subjected to copyright in the documentation requested by the defendant cannot be excluded, the court apprehends that by subjecting it to an administrative procedure a public communication was performed within the meaning of section 15 under the Law no. 8/1996 and the purpose of its performance (the issuance of an archeological discharge certificate) justifies in this case the reproduction of the work by copying and transmission to the persons who legitimately justifies the request by the general interest to have free and unrestricted access to any public information, fundamental principle of the relationships between persons and public authorities, in accordance with the Constitution of Romania and with the international documents ratified by the Parliament of Romania. Of course, accepting the hypothesis of a creation subjected to this law, the other terms of the Law no. 8/1996 have to be observed.

The fulfillment of the legal obligations doesn't arise out of the evidence produced, for which reason the court will partly admit the writ of summons and will order the coercion of the defendant to provide within a term of 10 days the public information requested through point 1 of the petition no. 3916/9th of Oct. 2010.

4.2. The court will reject the petition regarding the rest of the requested information (points 2-5 of the petition no. 3916/9th of Oct. 2010) as ill-founded, considering that the answers given by the defendant have been in accordance with the information held by the latter on that date.

The court appreciates that it cannot apprehend a violation of the provisions of the Law no. 544/2001, because the essence of this regulation is for the public information to be held by the authority or for it to be empowered to hold the information and forced according to the law to resort to other authorities or institutions in order to obtain it.

In this case the provisions of section 24 under the Enforcement Guidelines of the Law no. 544/2001 were not concerned, because the competent institution or authority cannot be determined out of the petition's wording to be redirected. It was shown within the reply that a project for including the Roşia Montană area in the UNESCO heritage hasn't been drawn up by the Ministry



of Culture and National Heritage, nor has such a project been submitted for analysis to the National Commission of Archeology.

According to section 5 par. 4 under the Law no. 544/2001, the access to information is also being granted by posting it on the own Internet website, so that the defendant has fulfilled its obligation to communicate the information held, respectively that the date of the following meeting of the National Commission of Archeology isn't known, for it is being set depending on the necessities and documentations submitted for analysis, it isn't known if a subject concerning the analysis of the documentation regarding Roşia Montană will be introduced on the agenda of the meeting of the National Commission of Archeology and the agenda will be posted in time on the website of the Ministry of Culture and National Heritage.

4.3. As regards the count of claim regarding moral damages, the court apprehends that the plaintiff hasn't proven a moral damage that cannot be repaired through the simple admission of this complaint and that would require a pecuniary compensation. The motivation of this count of claim is based on the "symbolic" effect of forcing the defendant to pay the amount of 1 RON and the court apprehends that the significance of admitting the complaint and the defendant's claim falling, following the ascertainment of the inobservance of legal provisions, is much more important out of this point of view, constituting a sufficient moral redress.

So, the court will reject this count of claim as ill-founded.

At the same time, on the grounds of section 129 par. 6 under the Code of civil procedure, the court will note that no court costs are being requested.

**FOR THESE REASONS,
IN THE NAME OF THE LAW
DECIDES:**

Partly admits the writ of summons formulated by the plaintiffs **CENTER FOR LEGAL RESOURCES** with the headquarters in Bucharest, 19 Arcului Str., 2nd district, and **GREENPEACE CEE ROMANIA** with the headquarters in Bucharest, 20 Maior Ion Coravu Str., 2nd district, contradictory to the defendant **MINISTRY OF CULTURE AND NATIONAL HERITAGE** with the headquarters in Bucharest, 30 Kiseleff Road, 1st district.

It coerces the defendant to provide the plaintiffs the public information requested by point 1 of the petition no. 3916/9th of Oct. 2010 within a term of 10 days.

It rejects the petition with regard to the rest of the requested information as ill-founded.

It rejects the petition with regard to the coercion of the defendant to moral damages as ill-founded.

It notes that no court costs are being claimed.

With appeal within 15 days since communication.

Delivered in public session today, the 9th of December 2011.

CHAIRMAN,
IONUT MILITARU
illegible stamp

COURT CLERK,
IZABELA DANIELA CHITU

Typed by judge I.M./5 copies

TRANSLATOR

The undersigned **MIHAELA TĂNASE**, sworn translator authorized by the Ministry of Justice in Romania with License No. 16576/2006, I certify the accuracy of this translation in ENGLISH with the document presented to me in ROMANIAN, seen by me, which photocopy I attached hereto.

Translator **MIHAELA TĂNASE**, authorized with License No. 16576/2006

