

FILE NO. 23774/3/CA/2010

ROMANIA  
TRIBUNALUL BUCURESTI (*BUCHAREST COURT*)  
SECTIA a IX-a CONTENCIOS ADMINISTRATIV SI FISCAL (*SECTION IX FOR  
CONTENTIOUS ADMINISTRATIVE AND TAX MATTERS*)

CIVIL JUDGMENT NO. 914

PUBLIC HEARING OF 7.3.2011

The Court is formed by:

**CHAIR: Gheza FARMATHY**

**REGISTRAR: Nicoleta GHERSIN**

[Stamp of the Bucharest Court]

On the docket, settlement of the contentious administrative action for disclosure of information of public interest, brought by the applicants CENTRUL DE RESURSE JURIDICE (*CENTRE FOR LEGAL RESOURCES*) and GREENPEACE CEE ROMÂNIA versus the defendant AGENȚIA NAȚIONALĂ DE RESURSE MINERALE (*NATIONAL AGENCY FOR MINERAL RESOURCES*).

The roll call for the public hearing is answered by the applicants, represented by their lawyer, who submits a power of attorney for the file; the defendant is absent.

The summoning procedure has been duly performed.

The session court clerk presents the case, then:

The Court opens the hearing for submission of evidence.

Through their lawyer, the applicants request for the Court to accept the written documents filed in the case.

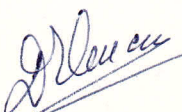
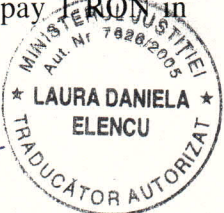
In accordance with the provisions of Article 167 of the Code of Civil Procedure, the Court accepts that the applicants should present the written documents filed as evidence and proceeds with the merits of the case.

Through their lawyer, the applicants request for the Court to admit the action as submitted. They argue that, until the date of this action, the applicants have not received any answer to their request for information, although both the deadline for communicating a refusal to disclose the information and the 10-day deadline for disclosing the information requested have expired, which infringes the provisions of Law no. 544/2001. They consider that the defendant is ignoring the legislation, as the information requested is of public interest – being related to the environmental accident in Baia Mare. They request for the Court to order the defendant to pay non-material damages with the symbolic value of 1 RON.

The Court considers the case in order to settle it.

**THE COURT,**

By their application registered on the docket of this Court under no. 23774/3/2010, the applicants Centrul de Resurse Juridice and Greenpeace CEE România sued Ministerul Mediului și Pădurilor (*Ministry of the Environment and Forests*) requesting that the defendant should be ordered to disclose the requested information of public interest, to pay 1 RON in non-material damages and to pay a penalty payment of 100 RON/day of delay.

In support of their action, the applicants argue that, on 16.4.2010, the defendant registered the application requesting information related to the exploitation/exploration licences for non-ferrous ores currently in operation in Romania, i.e. who are the licence holders, in what areas and for what periods of time they are valid, what quantity of non-ferrous ore was each exploitation/exploration licence granted for, what is the current status of the Baia Mare mine where an environmental accident occurred in the year 200, what measures were foreseen to restore the environment after the accident and what is the status of their implementation.

The applicants argue that, until the date of this action, they have not received any answer to their request, although both the 5-day deadline for communicating a refusal to disclose the information and the 10-day deadline for disclosing the information requested have expired (Article 7 of Law no. 544/2001). They consider the defendant's attitude to be a tacit refusal to supply the public information requested, therefore they feel they have been wronged by an infringement of their fundamental right to information (Article 31 of the Romanian Constitution).

The applicants show that they are not required to specify the interest they have in obtaining the information, but they underline that they need such information in order to prepare a study on projects with cross-border impact; the study would be presented in Germany, at a conference organised by the Federal Environment Agency. The reputational impact of the authorities' attitude is very serious; therefore, the applicants request that the defendant should be ordered to pay non-material damages with a symbolic value of 1 RON.

In order to ensure they will timely procure the necessary information, the applicants request a penalty payment as the only measure that can compel the defendant to comply with the law.

In law, the applicants made use of the provisions of Law no. 544/2001 on access to information of public interest and those of Law no. 86/2000 on ratifying the Aarhus Convention.

The defendant did not lodge a defence.


Documentary evidence was also produced.

Having analysed the acts and documents filed, the Court notes that:

On 16.4.2010, the defendant registered the request no. 143 of 14.4.2010 (CRJ) and, respectively, the request no. 196 of 14.4.2010 (Greenpeace), by which he was asked to provide information on the exploitation/exploration licences for non-ferrous ores currently in operation in Romania, i.e. who were the licence holders, in what areas and for what periods of time they were valid, what quantity of non-ferrous ore was each exploitation/exploration licence granted for, what was the current status of the Baia Mare mine where an ecological accident occurred in the year 200, what measures were foreseen to restore the environment after the accident and what was the status of their implementation.

Thus, from the content of the request addressed to the defendant, it results that the applicants asked for information belonging to the category of environmental information and to that of information regarding transparency in decision-making related to the documents issued by the regulatory authority.

In this regard, the provisions of the Convention on access to information, public participation in decision making and access to justice in environmental matters, signed on 25 June 1998 at Aarhus and ratified by Romania in Law no. 86/2000, are particularly relevant: for the purposes of the Convention, the environmental information is of public interest and means

  
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any information in written, visual, aural, electronic or any material form on factors, such as: substances, energy, noise and radiation and activities or measures (including administrative measures), environmental agreements, policies, legislation, plans and programmes affecting or likely to affect the elements of the environment.

According to Article 4(3) of the Convention, a request for environmental information may be refused if:

- a) The public authority to which the request is addressed does not hold the environmental information requested;
- b) The request is manifestly unreasonable or formulated in too general a manner; or
- c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

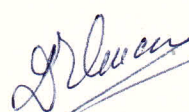
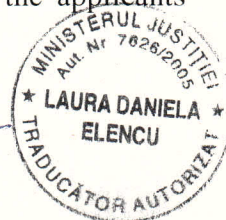
According to Article 4(4) of the Convention, a request for environmental information may be refused if the disclosure would adversely affect:

- a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- b) International relations, national defence or public security;
- c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
- e) Intellectual property rights;
- f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
- g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- h) The environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal must be interpreted in a restrictive way, taking into account the public interest served by the disclosure of such information and the possibility that the information requested might relate to the emissions into the environment. In the light of the above provisions, it is obvious that the information requested by the applicants is information of public interest, and therefore the refusal to disclose them is unjustified.

Regarding the defendant's argument that the information requested were exempted from dissemination in accordance with Law no. 182/2002, it must be emphasized that the defendant has not specified under which instrument the said information is classified.

In the light of these considerations, the Court finds that the defendant's refusal to disclose the requested information is unjustified and shall therefore uphold the applicants' action in this respect.

The Court shall dismiss the head of claim on ordering the defendant to pay 1 RON in non-material damages as unfounded, judging that – on the one hand – the refusal to grant a request does not automatically entail the authority's obligation to pay non-material damages, as it is necessary to bring arguments that such refusal has caused or may cause non-material damage, usually identified as a state of suffering or frustration affecting the applicant as a result of the defendant's abusive conduct.

It can be noticed from the statement of reasons for this head of claim that the applicants request that the defendant should be ordered to pay a symbolic amount of money, which means they intend to obtain satisfaction; nevertheless, the Court believes that this desideratum will be achieved by a judgment imposing a sentence on the defendant.

The Court shall adopt the same solution for the head of claim on ordering the defendant to pay a penalty payment, as the Court finds that – under this judgment and after it has become binding – the defendant will be required to comply in accordance with Article 24 of Law no. 544/2004, under penalty of a fine amounting to 20% of the gross national minimum wage per day of delay; thus, the means of exerting pressure on the defendant to comply is provided by the law, and it is therefore not necessary to establish an obligation under penalty payment.

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

Partially upholds the action brought by applicants **CENTRUL DE RESURSE JURIDICE**, with headquarters in Bucharest, sector 2, str. Arcului nr. 19, and **GREENPEACE CEE ROMÂNIA**, with headquarters in Bucharest, sector 2, str. Maior Ion Coravu nr. 20, versus defendant **AGENȚIA NAȚIONALĂ DE RESURSE MINERALE**, with headquarters in Bucharest, sector 1, str. Mendeleev nr. 36-38, and therefore orders the defendant to disclose the information of public interest sought by the request registered under no. 984/16.4.2010.

The Court dismisses the claim on ordering the defendant to pay non-material damages, as unfounded.

With right of appeal within 15 days from notification.

Given in public hearing today, 7 March 2011.

**CHAIR,**  
**Gheza Farmathy**

**REGISTRAR,**  
**Nicoleta Ghersin**

*[Illegible stamp]*

**Typed by G.F./ 5 copies.**

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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,  
*Laura Daniela Elencu*  
\* LAURA DANIELA \*  
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