

TO: UNECE, ACCC Secretariat

Email: aarhus.compliance@un.org

REF: ACCC/C/2016/140

Dear Ms Secretary,

Please receive our answers to the committee's questions, concerning case no ACCC/C/2016/140:

Question to both the Party concerned and the communicant:

1. Were all the documents relevant to the decision-making, in particular all attachments required

to be submitted by the applicant, and all the opinions which at the time of the EIA procedures in 2015 were legally required to be taken into account in these procedures:

(a) Publicly available during these procedures?

No, in our previous answer we mentioned all the documents that were missing from the public consultation, from which we quote:

i. "The screening decision (that was never issued); it is different than the initial decision.

ii. The scoping decision – published when the scoping decision was already final, on website, without the opportunity to make any comments (the document is called in Romanian" îndrumar"

iii. Documents that the final decision was based upon, that should have been communicated so that the public could make pertinent comments: The presentation of the project, the report on field research, the urban certificate and the land use plans, the studies that the EIA report is based on, like: geological reports, health studies, annexes of the EIA study (Plan of the region and location of the project, Framing plan - geology of the region, Framing plan – historical monuments, Framing plan - protected areas, Framing plan - hydrography of the region, The situation of occupying the land according to nature and use categories, The situation of the lands at the end of the activity). In September 24th, 2015 we made a request of public information and asked the communication of some documentation that was missing (attached), but the information was not communicated (**Annex 7**)".

(b) Made available other than in electronic format? If so, in what format and where?

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The documentation that was available only on the institution's website. The Gorj Environmental Protection Agency said that it was also available at its headquarter, but it was not possible to travel and study such amount of information in their offices during the working hours, when the public have their own jobs to attend. Also, traveling far away or without proper transportation means is not complying with the Aarhus standards as they are designed through the ACCC decisions.

Questions to the communicant

2. Please comment on the statement made by Felix Zacharia, on behalf of the Party concerned, at the hearing during the Committee's sixty-seventh meeting on 9 July 2020, that the communicant's requests to suspend the deforestation decisions were submitted too late, because the deforestation had already occurred.

The statement is not supported with any evidence. In fact, when we first submitted the injunctive reliefs requests to the court the extensions of the coal mines have not even begun, as far as the public had been informed.

3. Please clarify whether you consider that the alleged difficulties to obtain court orders suspending administrative decisions in order to prevent environmental damage constitute a systemic problem in Romania. If so:

(a) Please provide statistics or other evidence to support your view;

Please provide a new deadline to submit statistics or other evidence on this point. We were not able to finalize such analysis because the state has no evidence of the environmental cases in court. We have to rely out analysis on our own investigation. In this respect we estimate we need at least one month for our own desk research concerning our own practice up to date.

We have already provided the courts decisions and translations concerning the coal mines cases and we will provide statistics from our office since 2005 when the law has entered into force up to date (15 years and a large number of such cases handled). We will attempt to find other cases but since the state is not organising any evidence of the environmental cases it is difficult to obtain such information.

(b) Please clarify if you consider this problem to result from:

(i) Insufficient legislation; or

(ii) The approach of the judiciary in applying the legislation (though you consider the legislation in itself is not problematic).

The problem derives from the legislation (art 14th for the Law no 554/2004

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regarding the court procedure in the administrative courts) that is not meant for the environmental cases. The legislation requires a well justified case, but without arguing the illegality of the administrative acts so that the judge would not have to tackle the merits of the case. In environmental issues, there are no other substantive issues to be invoked other than the violation of the environmental law, given the fact that there are not any other subjective rights violated. Therefore 99% of the injunctive reliefs are rejected because there is no well justified case and the court is not able to analyse the merits of the case during the injunctive relief procedure.

Also, the legislation stipulates that it is needed to prove an imminent prejudice, but in the environmental cases to prove an imminent prejudice means that the injunctive would be granted too late and the prevention principle would be violated.

General conclusion

Most of the judges are rejecting such cases and many environmental values are lost by the time the cases are finalized. Mr Zaharia's statement is proving our point, were tried. If such an administrative act is not made public and it is immediately executed, there is no access to justice and no timely procedure for the public. This was the case of the deforestation decisions, issued without public consultation, and executed without any public information concerning the state of the logging or of the extension of the coal mine projects. However, we do not believe Mr Zaharia's statement without any proof.

In this regard, we should mention for the sake of argument, even if not directly related to this case, that, after the Rosia Montana Case at ACCC, case no ACCC/C/2012/69, no legislative amendments were made to ensure public consultation for all decisions with environmental impact, such as archaeological discharge certificates (in Rosia Montana case) or deforestation decisions in this case.

For the communicant,

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