LEGAL ISSUES IN THE IMPLEMENTATION OF THE *ROSIA MONTANA* PROJECT

„The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." International Court of Justice, Advisory opinion of 8 July 1996

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By virtue of its size, its objectives, and potential adverse environmental impacts, the *Roşia Montană* Project blatantly infringes the principles and regulations of national, Community and international environmental law.[1]

Thus, by completely depleting the gold and silver resources in the region over a relatively short period of time (16.4 years), at major socio-economic and environmental costs (fundamental change of the occupational structure in the region, long term environmental hazards triggered by the use of cyanides, and the irreversible deterioration of the natural environment) the project contravenes to the fundamental objective of sustainable development, breaks the requirements of the precautionary principle and of the principle of sustainable use of natural resources, overlooks the right of future generations to the legacy of an untainted environment and to a fair share of the common natural and cultural heritage. Moreover, the legal form adopted by Rosia Montana Gold Corporation, that of a share company with its scope of activity limited to the implementation of a sole, precisely defined, investment project, also involves important legal risks and is assimilated to the negative international practice of environmentally hazardous business.

[1] The *Rosia Montana* Project aims to extract low silver and gold content ore in the region (assessed to be 10.6 million ounces of gold and 52.3 million silver, with the value of the known deposit being estimated at over $3 billion), by open cast mining (36000 tons of ore extracted daily, a total of 13 million tons/year), over 16.4 years, using cyanide treatment as the extraction method (250000 tons cyanide, required throughout the investment lifetime). The tailings and industrial waste generated by the extraction and cyanide treatment operations are to be stored in a 400 ha tailing pond, of 250 million tons storage capacity and 185 m dam height. (see *www.gabrielresources.com*)

I. With its potentially adverse environmental impacts, the *Rosia Montana* Project breaks the legal regulations of Community law and the international conventions on environmental protection.

1. Background

Community law does not contain a clear and widely used definition of the concept of environment; however, according to Regulation No. 1872/84, the environment is „a combination of elements which, in their inter-dependence, make up the framework, ambient and individual living and social conditions as they exist and are experienced", which indicates a broad understanding thereof.[2]

Also, in defining „environmental information" (art. 2.1.) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC shows that this is any available information regarding „a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction between these elements; b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment".[3]

According to art. 174 of the EC Treaty, the EU environmental policy proposes four main objectives:

- to maintain, protect and improve the quality of the environment;
- to protect human health;
- to make prudent and reasonable use of the natural resources;
- to promote at the international level adequate measures for environmental problems of a regional or global scope.[4]

[2] OJL 41 of 14.02.2003

[3] Council Regulation (EEC) No. 1872/84 of June 1984 on Action by the Community Relating to the Environment, OJL, 176 (1984) 1.

[4] The Draft Treaty instituting a Constitution for Europe establishes in art. 3 „Objectives of the Union" that: „the Union shall work for a Europe of sustainable development…" ased on, among others, „a high level of protection and improvement of the quality of the environment" (item 3) and promoting „solidarity between generations". In reference to Future Competencies of the Union, the conservation of marine biological resources is included in the category of exclusive competencies, and the environment in that of shared competencies.

In accordance with art. 174 para. 3 of the EC Treaty, risk assessment should be based on the available technical and scientific data, and the concept of „maintaining the quality of the environment“ should be approached in such a way as its implications should transcend mere preservation, and require preventive environmental protection measures.

In regard to „prudent and reasonable use of natural resources“, this refers to both natural media (e.g.: air, soil, water, and plants), and to mineral resources.

According to para. 2 of the same article, the precautionary principle and the principles that should govern the recourse to preventive action are an important component of the concept of preventive environmental protection, enabling the Community to safeguard environmental protection in the second tier EU legislation.

The EC environmental provisions do not prevent the Member States from taking „more stringent“ protective measures that must, however, be compatible with the EC Treaty.

The Charter of Fundamental Rights of the EU (2000) retained in art. 37 „Environmental Protection“ as a fundamental objective: „A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development“.

2. Sustainable Development

The principle of sustainable development expresses the obligation to safeguard the sustainability of resources, and any current development policy should ensure that it would not harm either the future generations, or the shared resources (water, air, soil, biodiversity).

The type of natural resource extraction proposed for Roşia Montana contravenes to the principle of sustainable development and use, also provided in the **Convention on Biological Diversity** adopted at Rio de Janeiro (1992), because:

- it has a negative social impact (900 displaced households and 2000 people relocated);
- it significantly affects all the environmental media (water, air, soil) and all the life forms will be directly impacted on an area of at least 1600 ha and indirectly on an area that is difficult to assess;
- the provided operation will exhaust the natural resources in a very short term;
- it may compromise sustainable development in the region as well as a number of regional business activities (e.g. the use of the natural potential for tourism, agro-tourism) over a very long period of time.

The Rosia Montana Project is in contradiction with the international obligations Romania has assumed in this field by the ratification, via Law no. 58/1994, of the Convention on Biological Diversity, which, in art. 8, provides some obligations for the signatory, including:

- the obligation to regulate or manage the biological resources of importance for the conservation of biological diversity, within or without the protected areas, to ensure sustainable development and use thereof;
- the obligation to promote the protection of ecosystems, natural habitats, and the maintenance of viable populations of species in their natural environment;
- the obligation to promote sustainable and ecologically sound development in the areas adjoining protected areas, in order to ensure enhanced protection of such areas;
- the obligation to make efforts to provide the necessary conditions for compatibility between present uses and biological diversity conservation and the sustainable use of its components.

According to art. 10 of this Convention, every State shall:

„a) integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

b) adopt measures relating to the use of biological resources to avoid or minimize negative impacts on biological diversity;

c) protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use requirements".

Note that, according to the Constitution, after ratification under the law, the Convention is now part of the national law, and its provisions have the same legal value as national legislation.

3. The rights of future generations. If the right to a healthy environment concerns the present generations, the irreversible nature of certain environmental impacts has imposed the recognition of the right of future generations to inherit an ecologically balanced environment. This entrusts the present generations with the duty to make sensible use of natural resources, without depleting them and without depriving future generations of benefiting from their existence. Moreover, by the safety measures to be taken and maintained post-operation (the tailing dam, for example, should last for at least 100 years!) negative burdens will be set for another three generations!

4. The problem of environmental impact

The EU legislation related to environmental impact issues includes **Directive no. 85/337/EEC on assessing the environmental impacts of certain public and private projects (the EIA Directive), amended by Directive no. 97/11/EC, Directive no. 2001/42/EC on the assessment of the environmental impacts of plans and programmes (SEA Directive) and Directive no 2003/35/CE of the European Parliament and Council of 26 May 2003 on public participation in the development of environment related plans and projects, amending Council Directives 85/337/EEC and 96/61/EC in regard to public participation and public access to justice.** We noted above that Romania has fully transposed Directive no. 85/337/EEC, in Law no. 137/1995 on environmental protection, as amended by Emergency Order no. 91/2002, and by a series of subsequent regulations (Government Decision no. 918/2002 on of the framework procedure of environmental impact assessment and for approval of the public or private projects list subject to this procedure, and by a number of ministerial orders). In relation to Directive. 200l/42/EC, note that a draft Government Decision is currently submitted to approval in order to transpose its provisions.

In its art. 1, the EIA Directive provides that public and private projects that might have significant environmental impacts must be subject to a mandatory environmental impact assessment.

In relation to the purpose of this directive, the term „project" refers to a broad range of activities. Under art. 1 para. 2 of the EIA Directive, „project" means the execution of construction or other installations or activities, as well as of other interventions on the natural surroundings and landscape, including the extraction of mineral resources. If the scope of the EIA Directive includes all the construction works and interventions in the extraction of natural resources, then the extension of the existing installations should also be considered as a potential purpose of this directive.

As specified in art. 3 of the EIA Directive, the installations corresponding to the definition of a „project" should form the object of an environmental impact assessment: „*The environmental impact assessment shall identify, describe* and *assess in an appropriate manner, in the light of each individual case* and *in accordance with Articles* 4 *to* 11, *the direct and indirect effects of a project on the following factors:*

- *human beings, flora and fauna*
- *soil, water, air, climate and the landscape*
- *material assets and the cultural heritage*
- *the interaction between the factors mentioned under the first, second and third indents.*"

According to art. 4 para. I „installation for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes“ (cf. Annex 1, para. 4, item 2) will have to be assessed under art. 5 to 10.

In order to comply with the procedural steps provided by the EIA Directive, it will be necessary to determine the group of persons that have the individual right to participate in the environmental impact assessment. Article 6 para. 2, states the following: „*the Member States shall ensure that any request for development consent and any information gathered under art.* 5 *are made available to the public within a reasonable period of time, in order to give the public concerned the opportunity to express an opinion before the development consent is granted".* This piece provision contains two requirements that the Member States have to meet when there is an application for development consent: the information collected has to be made available to the public within a reasonable period of time; moreover, „the concerned public“ needs to have an opportunity to „express an opinion“.

Although the Directive's requirements have been formally received at the level of Romanian legislation, it still remains to be seen to what extent they will be effectively implemented and to what results they will produce.

In this sense, it becomes of the utmost importance to comply with the **effet utile principle** emphasized in the jurisprudence of the Court of Justice of the European Communities (CJ/EC) which states that the practical efficiency of a norm lies in its implementation in keeping with the purpose for which it was passed.[5] Therefore, an interpretation of Community legislation shows that the environmental impact assessment procedure must be completed before any decision on the project implementation may be adopted, one way or another, by any practical or legal steps.

5. Implications of the transboundary nature of the environmental impacts of the project

By virtue of its size and of its nature, the „Rosia Montana“ Project has a transboundary impact, in the sense that its negative effects may significantly affect the environment of other states (especially the neighbouring states). In this context, Hungary has already notified its intention to participate in the environmental impact assessment procedure. As the other states in the region have all ratified the Espoo Convention of 25 February 1991 on environmental impact assessment in a transboundary context and signed the Protocol related to strategic environmental assessment (Kie, 21 May 2003), consultation should have started without delay at least in regard to Hungary (as an Affected Party), and the documentation submitted for the

[5] The classic example in the application of the *effet utile* principle is the sentence of the CJ/EC in the von Binsbergen case, Case C-33/74.

environmental impact assessment should have been forwarded (art. 4 of the Espoo Convention), as well as any other type of available information on the potentially significant environmental impact.

In a regional context, the Convention on cooperation for the protection and sustainable use of the Danube River (Sofia, 29 June 1994) ratified by all the (river-side) Signatory Parties sets the obligation of the contracting states to take all the adequate legal, administrative and technical measures to prevent and reduce, to the extent possible, any impacts and negative changes that may occur or be caused in relation to the Danube and the waters in its watershed (art. 2.2). Moreover, under art. 14, the Contracting Parties must as soon as possible assure that their competent authorities should be determined to make available to any natural or legal person the available information on the state of the quality of the riverside environment along the Danube, in response to any sensible request, without the respective person being required to motivate its request.

6. Control of water pollution

Directive no. 80/68/EEC on the protection of groundwater against pollution cased by certain substances distinguishes between two categories of regulated substances included on two lists, i.e. lists I and II. Cyanide is included on List I.

Article 1 of the Directive defines the groundwater table as „*all waters that lie below ground level in the saturation area and in direct contact with the soil or subsoil". Direct discharge* means the introduction of List I or II substances into the groundwater table, without filtration through the soil or subsoil; *indirect discharge* refers to the introduction of List I or II substances into the groundwater table after filtering through the soil or subsoil.

As suggested by art. 3 of the Directive, the Member States must take all the necessary steps in preventing the introduction of List I substances into the groundwater, which bans the direct or indirect introduction of List I substances into the soil.

Under art. 4, the Member States should investigate any process involving the use of these substances, while para. 1 states: *„In the light of this investigation, the Member States shall ban such activities or issue permits only when all the necessary technical precautions in preventing such discharges have been complied with."* Article 6 also states that in establishing the acceptable limits, the Community will envisage the use of the „best available techniques", i.e. „the most advanced and efficient stage of development registered in the development of an activity and modes of operation, that demonstrate the practical feasibility to represent a reference in establishing emission limit values in order to prevent, and if this is not possible, to reduce emissions globally and impacts on the environment as a whole." (Law no. 137/1995)

Art. 9 states what must be specified in the permit, and art. 11 provides that permits may be issued for a maximum 4 year period. Once this period has expired, a permit may be renewed, amended, or withdrawn.

The data presented in the la Rosia Montana Project Summary lead to the conclusion that a leak of potassium cyanide (a highly toxic chemical) into the groundwater table and the drinking water system of the impacted population may not be altogether excluded.

To conclude, a permit for the construction of a basin for cyanide storage will represent a breach of art. 4, and its issuance for an unlimited period of time will break the provisions of art. 11.

Moreover, the jurisprudence of the Court of Justice of the European Communities (CJ/EC) has stated that the European Directives on norms of water and air quality must be interpreted in the sense that they grant the individuals rights that need to be protected by the national jurisdictions of the Member States.[6]

7. Nature conservation

The Rosia Montana Project is in contradiction with several regulations related to nature conservation, including the European Convention on Landscape and Directive 92/43/EEC on the conservation of natural habitats, wild flora and fauna.

Romania ratified, by Law no. 451/2002, **the European Convention on Landscape** which has as its main object the promotion of landscape protection, management and development, and the organisation of European cooperation in this area.

In the sense of art.1 of the Convention, the following terms are clarified as:

„a) landscape designates a part of the territory as such by the population, and the character of which is the result of the action and interaction of natural and/or human factors;

d) landscape protection comprises the actions taken in preserving and maintaining the significant or characteristic aspects of a landscape, justified by its heritage value deriving from natural configuration and/or human intervention;

e) landscape management comprises the actions aiming to maintain the landscape, in a sustainable development perspective, to the end of directing and harmonising the changes induced by social, economic, and environmental evolution“.

[6] See, especially, CJ/EC, decision of 30 May 1991, C-361/88, Commission vs. Germany, paras. 16; CJ/EC, decision of 17 October 1991, C-58/89, Commission vs. Germany, para 14.

According to this Convention: „*each Party commits to:*

- *legally recognise landscapes as an essential component of the living environment for the population, an expression of the diversity of the common cultural and natural heritage and a foundation of its identity;*
- *establish and implement landscape policies aiming to protect, manage and develop it by the adoption of specific measures under this Convention;*
- *establish procedures for the participation of the general public, regional and local authorities, and any other stakeholders, in defining and implementing the landscape policies under letter b);*
- *integrate the landscape into the land management, urbanism, and cultural, environmental, agricultural, social and economic policies, and in other policies that might directly or indirectly impact the landscape.“*

Directive no. 92/43/EEC on the conservation of natural habitats and wild flora and fauna, transposed into our legislation by **Emergency Government Ordinance No. 236/2000 on the regime of protected natural areas, the conservation of natural habitats and of wild flora and fauna**, (approved by Law No. 462/2001), provides in art. 2:

„1. *the purpose of this Directive is to contribute to the insurance of biodiversity through the conservation of natural habitats and of the wild flora and fauna on the European territory of the Member States to which the Treaty applies.*

2. *The measures taken based on this Directive aim to maintain or restore, in a good state of conservation, the natural habitats and species of the wild flora and fauna of Community interest.*

3. *The measures taken based on this Directive will take into account the economic, social and cultural requirements and the regional and local characteristics.“*

Moreover, the purpose of EGO No. 236/2000 is to *„safeguard the preservation and sustainable use of the natural heritage“.*

Art. 1 of the Directive establishes the meaning of the term „natural habitat: terrestrial or aquatic zones distinguished by their geographical, abiotic and biotic characteristics, either wholly natural, or semi-natural“, and also provides the meaning of the concept of „state of conservation for a natural habitat: the sum of influences that act upon a natural habitat and on typical species“.

In relation to these regulations, we consider that the Rosia Montana Project may have a negative impact on the nature conservation activities.

8. Protection of the natural and cultural heritage

By Decree No. 187/1990, Romania accepted the **Convention on world cultural and natural heritage, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation, on 16 November 1972.**

Article 1 defines the cultural heritage to include „sites: human works or works resulting from the conjugated activities of man and nature, and areas including archaeological digs of exceptional universal value from a historic, aesthetic, ethnological, or anthropological point of view" and the natural heritage (in art. 2)

- „*natural monuments consisting of physical and biological monuments or groups of such formations of exceptional universal value from an aesthetic or scientific point of view;*
- *geological and physiographical formations and strictly defined areas representing the habitat of threatened animal and vegetal species, of exceptional universal value from the point of view of science or conservation;*
- *strictly defined natural sites or areas, of exceptional universal value from a scientific, conservational, or natural beauty perspective."*

Article 4 indicates, as a general obligation of the States, to ensure identification, protection, conservation, use and handing down to future generations of the cultural and natural heritage located on their territory.

As suggested by art. 5, in order to provide an efficient protection and conservation and the most intensive use possible to the cultural and natural heritage, it is necessary that the States should take adequate legal, scientific, technical, administrative and financial measures to identify, protect, preserve, use and include this heritage into public circulation.

Also, our legislation, in Government Ordinance No. 43 of 30 January 2000 on the protection of the archaeological heritage and the designation of certain archaeological sites as national interest zones, defines (art. 2 letter g) „*an archaeological site designated as a national interest zone as a priority archaeological interest zone instituted over the territory of the administrative unit of land that includes such archaeological sites where scientific research, protection and capitalisation is of exceptional importance for national history and culture, thanks to the material legacy, movable or immovable goods included or proposed to be included in the category of «treasury of the movable national cultural heritage» or, as applicable, are included or proposed to be included in the category of historical monuments on the List of World Heritage."*

By Law No. 5/2000 approving the National Land Development Plan - Section III – protected areas, Rosia Montana was designated as a protected site:

„Law 5/2000, Annex* 1: *Natural monuments:

1.8 *Piatra Despicata Rosia Montana Commune 0.20 ha*

2.60. *The Aven at Hoaca Urzicarului PN Vartop village 1.00 ha*

2.83 *Piatra Corbului Rosia Montana Commune5.00 ha*

2.1 *Detunata Goala Bucium Commune 24.00 ha*

2.3 *Detunata Flocoasa Bucium Commune 5.00 ha*

2.15 *Narcissi Meadow at Negrileasa Bucium Commune 5.00 ha*

2.9 *Vânaturile Ponorului Cave Ponor Commune5.00 ha*

Law* No. *5/2000, Annex 3* (the *Annex was developed by the Ministry of Culture and* Religious Affairs *based on the data included in the Archaeological Catalogue)

g) 3. Historical Centre Rosia Montana village, Rosia Montana Commune, Alba County

1) 1. *Roman galleries of gold mining operations in Rosia Montana village, Rosia Montana Commune, Alba County*

m) 2. Houses – 18th-19th century Rosia Montana village, Rosia Montana Commune, Alba County".

9. The European Convention for the Protection of Human Rights and Fundamental Freedoms

As a member of the Council of Europe, Romania is legally bound to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by Law No. 30 of 18 May 1994) which, according to art.20(2) of the national Constitution, prevails over national legislation, as well as with the relevant jurisprudence of the European Court for Human Rights (ECHR).

In the absence of an express provision for the right to a healthy environment (for objective reasons, as, at the time the Convention was adopted – in 1950 – environmental issues were not evidently apparent), the ECHR jurisprudence developed a broad, varied, and flexible approach to the concept of „private life" in the sense of art. 8.1 of the European Convention, which allowed for its extension „by proxy" to include the right to a healthy environment.[7]

[7] The European judge does not limit the meaning of the term „private life" to the intimate sphere of personal relationships, but extends it to the individual's right „to establish and develop relationships with his peers, therefore also covering personal or commercial activities, and places where these are conducted" (Niemietz vs. Germany, 16 December 1992, A. 251 B, p.29).

Thus, it is considered that the various forms of pollution affect private life, or that serious harm to the environment may affect a person's welfare and deprive that person of the normal use of his/her home, which will affect his/her private and family life, even if they may not pose serious hazards for personal health.[8]

Indeed, art.8 para. 1 of the Convention stated the fact that each person has the right to private life and a home. Thus, according to a large number of decisions of the Court of Human Rights in Strasbourg, all individuals have the right to develop their personality by expressing their freedoms. Such freedoms also include the right to have their homes respected. The right to respect their private life is based on the State's obligation to respect this liberty. Public authorities may intervene in respecting this right only in the public interest, as, for example, national safety, the country's economic welfare, protection of public health, etc. (under art. 8-11). This liberty is only subject to the limitations stated in the law as necessary. Public authorities or governments that restrict the exercise of this right must justify the act based on art. 8 para. 2 Convention.

Because of this mining project at Rosia Montana, thousands of people have been and will be relocated (in Rosia Montana alone 740 houses and 138 flats will be affected by such relocation). This interference in the life of the inhabitants may only be justified if made in the „public interest", i.e. aims to improve „the country's economic welfare", and this is proportionate to the benefits brought to the affected individuals (the project mentions rights to only 2% of the total production that the concession holder must pay on an annual basis). The final relocation of numerous families by direct or indirect (physical and political) pressures is a brutal infringement of the right to a private life in a good quality environment.

10. Resolutions of the UN General Assembly

In keeping with numerous resolutions adopted by the UN General Assembly regarding the „permanent sovereignty over natural resources", of which for example: Resolution 1803 (XVII) of 14.12.1962, it follows that both the significant interference with the life of thousands of people who live in this mining region, and the irreparable damage caused to the environment by this extractive method do not seem to be proportionate to the potential economic benefit that Romania might obtain as a manufacturing country.

[8] Sentence in the case of Powel and Rayner vs. the United Kingdom, decision of 21.02.90, p. 40; Decision in the case of Lopez-Ostra vs. Spain, of 9 December (1994).

11. Other documents

By the Decision of 17 November 1994 of the European Parliament, adopted based on Directive No. 91/689/EEC on hazardous waste, the Community body pronounced in favour of banning gold mining operations that use the chemical method of cyanide percolation.

Also, the Special Commission created at European Commission level for the analysis of the accident at Baia-Mare concerning cyanide pollution (January 2000) recommended, on 15 January 2000, the avoidance of this method.

At the national level, the Senate of the Czech Republic (August 2002) and the State Council of Turkey (1997) decided to ban the use of the chemical, cyanide percolation, method.

II. Infringement of the Provisions of the Relevant Romanian Law

1. Infringement of the fundamental right to a healthy and ecologically balanced environment

The Romanian Constitution (revised by Law No. 429/2003) expressly recognizes in art. 35 „the right of any person to a healthy and ecologically balanced environment“ and establishes the obligation for the state to provide the legislative framework for the exercise of this right. In the same context, it also stipulates the obligation of physical and legal persons to protect and improve the environment (art. 35(3)). The procedural guarantees are provided in the Environmental Protection Law (No. 137/1995 art.5), while, at international level, Romania has also ratified the Aarhus Convention (1998).

In a material sense, it is accepted that the fundamental right to a healthy environment essentially assumes the right of any person to live in an environment that may ensure human health and welfare, and human dignity. As widely accepted „The concept of human dignity… involves a sufficient level of environmental quality not only for the mere biological survival, but also for the satisfaction of all the fundamental human needs“.[9] While the relocation of the local population and the turning of more than 450 ha into a moonscape, with major ecological implications will actually be tantamount to an infringement of the content and meanings of the right to a healthy and ecologically balanced environment.

The observance of the procedural rights of the right to a healthy environment is also expressed by the obligation to consult the public in the permitting process involving activities with an environmental impact and grant access to justice.

[9] Maguelonne Dejeant-Pons, Marc Pallemaerts, Droits de l’homme et environnement, Editions du Conseil de l’Europe, Paris, 2002, p.17.

Unfortunately, although the procedural rights pertaining to the fundamental right to a healthy environment are formally provided (art. 5 of Law no. 137/1995) there is still little practice, including judicial practice in the actual exercise thereof.

Also, the existing national regulations are still rather unclear on effective public access to justice throughout the environmental impact assessment process, although the law has recognised legal standing to both natural persons and non-governmental organisations.

2. Overlooking the State's obligation to ensure exploitation of natural resources in accordance with the national interest

The Romanian Constitution of 8 December 1991 specifies in art. 135 (2) letter d the obligation of the State to ensure „**the exploitation of natural resources, in accordance with the national interest**". While the complete depletion of the gold resources in the Western Carpathians and the conditions under which this is to be done in concrete terms of the **Rosia Montana Gold Corporation** project will not meet this constitutional requirement.

Indeed, in any state, the existence of a natural reserve of precious metals is a fundamental element of national security. Therefore, a ban on the fast capitalisation of such a natural resource, under blatantly unfavourable conditions for the Romanian State will conform to the constitutional provisions.

3. Non-compliance with the State's obligation to maintain the ecological balance

Art. 135 (2) letter e (of the Constitution) establishes the obligation of the State to provide the restoration and protection of the environment, and to maintain the ecological balance. While the transformations caused to the environment and the pollution involved in a project the size of the Rosia Montana proposal will seriously affect and even destroy the local ecosystems.

4. The principle of sustainable use of natural resources

One of the principles established by the Framework Environmental Protection Law no. 137/1995 „in order to ensure sustainable development" is „**the sustainable use of natural resources**". According to the same legislation, **sustainable use** is „*the use of natural resources in such a way and at such a rate as not to lead to their long term decline, maintaining their potential, in accordance with the needs and aspirations of the present and future generations*", and **natural resources** mean „*all the natural elements of the environment that may be used in human activities: non-renewable resources – minerals and fuels used, renewable – water, air, soil, wild flora and fauna, and permanent – solar, wind, geo-thermal and wave energy*".

Therefore, as a **non-renewable mineral resource, gold and silver may not be extracted in a way and at a rate that, within a mere 16.4 years, would lead to the depletion of the resource**, as it will affect the requirements of the principle of sustainable use.

III Legal Risks

Rosia Montana Gold Corporation S.A. was created in 1995, as a share company for the implementation of a sole project: extracting gold in the Western Carpathians. This type of company involves the risk, which is enhanced by the way in which investment resources are provided – attracting funds – of minimal solvency and the provision of illusory financial guarantees. As it will not develop other activities, it also involves low credibility on the specialised market and classifies in the bad international practice of environmentally hazardous projects.

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PROBLEME JURIDICE ALE REALIZĂRII PROIECTULUI ROŞIA MONTANĂ

Costurile socio-economice şi de mediu ale proiectului Roşia Montană prin schimbarea structurilor ocupaționale, utilizarea cianurilor şi deteriorarea ireversibilă a mediului sunt considerabile şi contravin obiectivului fundamental de dezvoltare durabilă şi principiului Precauției. Ele ignoră de asemenea obligația generației de astăzi de a lăsa o moştenire ecologică şi culturală corectă. În sfârşit, forma societății pe acțiuni cu un câmp limitat de acțiune al proiectului comportă riscuri juridice şi nu corespunde practicii internaționale în domeniul mediului. Autorul demonstrează în mod clar că prin impactul de mediu negativ al proiectului, acesta contravine reglementărilor comunitare în materie: nu numai directivelor 2003/4/EEC şi 90/313 EEC cu privire la accesul publicului la informația de mediu, dar şi art. 174 al Tratatului CE care trasează liniile directoare ale politicilor de mediu. Articolul din tratatul CE stabileşte conceptul de menținere a calității mediului ceea ce depăşeşte ideea de simplă conservare şi implică măsuri de protecție preventivă. De asemenea, Carta Drepturilor Fundamentale a UE (2000) prevede ca obiectiv de bază în domeniul mediului: „un grad înalt de protecție şi îmbunătățirea calității mediului".

În continuare se arată că prin deplasarea populației, prin afectarea factorilor de mediu pe o suprafață de mai bine de 1600 ha, prin epuizarea resurselor naturale a zonei, **proiectul se află în contradicție atât cu principiul**

dezvoltării durabile, cât şi cu Convenția cu privire la diversitatea biologică, ratificată de România prin Legea nr. 58/1994 care prevede obligații precise ale părților referitor la conservarea biodiversității şi la protecția ecosistemelor. Abordând problema impactului de mediu, autorul trece în revistă reglementările comunitare cu privire la evaluarea acestuia şi participarea publicului la luarea deciziilor de mediu, reglementări transpuse sau pe cale de a fi transpuse în dreptul românesc şi care au fost ignorate în cursul dezvoltării proiectului Roşia Montană. **Implicațiile de natură transfrontieră ale proiectului** contravin de asemenea unor convenții internaționale recunoscute în zonă: Convenția de la Espoo cu privire la evaluarea impactului de mediu în context transfrontieră şi Convenția cu privire la cooperarea şi protecția utilizării apelor Dunării de la Sofia.

Protecția apei împotriva poluării constituie obiectul unui importante directive europene (80/68 EEC). Dispozițiile acesteia privind obligații clare ale statelor membre cu privire la controlul apei şi interzicerea activităților atunci când nu sunt luate toate precauțiile tehnice sunt de asemenea încălcate: poluarea apei potabile din zonă cu cianuri în urma realizării proiectului nefiind exclusă.

În ce priveşte **conservarea naturii** proiectul Roşia Montană contravine Convenției europene cu privire la peisaj, ratificată de România şi directivei 92/43 EEC, care reglementează protecția habitatelor naturale şi a florei şi faunei sălbatice.

Protecția moştenirii naturale şi culturale prevăzută de Convenția în materia adoptată de UNESCO şi ratificată de România nu este luată în considerare. Sunt menționate în acest sens legile româneşti care aprobă Planul Național de dezvoltare teritorială şi stabilesc ariile protejate, precum şi cele 7 monumente naturale puse în primejdie de realizarea proiectului.

Nu mai puțin importante sunt **încălcările Convenției Europene a Drepturilor Omului şi Libertăților** care la art. 35 enunță în mod expres „dreptul oricărei persoane la un mediu sănătos şi echilibrat ecologic“ precum şi îndatorirea persoanelor fizice şi juridice de a proteja şi ameliora mediul. Dispozițiile procedurale şi cele privind utilizarea durabilă a resurselor naturale ale legii-cadru 137/1995 sunt de asemenea ignorate de proiect. De altfel, **Constituția României din 1991 conține o dispoziție cu privire la „exploatarea resurselor naturale în conformitate cu interesul național“** – interes național contrazis în mod evident de proiect.