



EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS



February 28, 2018

Her Excellency Vasilica-Viorica Dăncilă  
Prime Minister of Romania

Your excellency,

The undersigned organizations would like to draw your attention to the current status of the international arbitration case no. ARB/15/31 initiated by Gabriel Resources as well as to the repercussions this status might have on defence mechanisms available to the nongovernmental organizations acting as prospective Amici. We call upon you to ensure as Party to the case a transparent and open process without further delays.

If approved, the Roșia Montană mine proposed by Gabriel Resources Ltd would become Europe's largest cyanide-based open-pit gold and silver mine. For the past 16 years, residents of Roșia Montană in Romania fought against the proposed multi-billion dollar mining project, which would have destroyed their home and the surrounding environment. When they were joined by neighboring villagers, environmentalists, students, priests, academics and citizens at large, from Romania and internationally, "Save Roșia Montană!" became a large and influential movement.

The Rosia Montana project is on hold after Romanian courts found that Gabriel Resources had illegally obtained several permits required to operate the mine. Other permits have never been issued as the company failed to submit all necessary data.

In July 2015 Gabriel Resources initiated proceedings before the International Centre for Settlement of Investment Disputes (ICSID) in Washington against the Romanian State, demanding billions in taxpayer money as compensation because of the country's alleged breach of several obligations in its bilateral investment treaties with Canada and the UK within the Rosia Montana permitting process. However, what is actually at stake is the future of a community, the health of the environment in a region that transbounds Romania's borders and the integrity of a cultural patrimony that has unique universal value.

The investment dispute at the ICSID Tribunal requires special diligence from the part of the Romanian state as a party in the case. The undersigned organizations therefore would like to draw your attention to the following aspects of the case and request the Romanian Government to take all steps and use all procedural means at its disposal to ensure the procedures in the case are in full line with the timeframes and transparency principles set out under the relevant international agreements.

As can be observed in the section of ICSID's website dedicated to case no. ARB 15/31 significant delays in the procedure have already occurred, leading to the fact that to date the tribunal has not yet published a public version of the claimant's memorial filed on 30, June 2017. According to the Tribunal's procedural order no. 3 issued in consideration of this dispute, a maximum period of 7 weeks was foreseen to settle all disputes among the parties pertaining to which parts of the memorial would remain confidential, including the Tribunal's decision on any such matters.

However, the undersigned prospective Amici were informed by the Tribunal that shortly after the Tribunal decided on the issues of confidentiality regarding Gabriel's memorial, one party to the case requested, on 22 January 2018 that the Tribunal reconsider its decision on the publication of the memorial.

In addition to these problematic events, on 8 February 2018 the President of the Tribunal, Ms. Teresa Cheng tendered her resignation. This has led to the suspension of proceedings, which was notified to the parties by the Secretary-General of ICSID. Whereas this in itself leads to a prolongation of procedures, it will also delay a decision on the above-mentioned request by one of the parties that the Tribunal reconsider the publication of the memorial.

According to ICSID's 2006 Arbitration Rules, Rule no. 4 - Appointment of Arbitrators by the Chairman of the Administrative Council

*(4) The Chairman shall use his best efforts to comply with that request within 30 days after its receipt. Before he proceeds to make an appointment or designation, with due regard to Articles 38 and 40(1) of the Convention, he shall consult both parties as far as possible.*

From the above-cited rule, we acknowledge that consultations with the parties are an important part in this process. We therefore request that the Romanian Government ask for effective consultations for the identification of an experienced and qualified new president and to use all their best efforts to accelerate the process to carry out a diligent and appropriate selection.

Following the constitution of the new Tribunal, we request the Romanian Government to plead for full transparency of the process and to use all procedural means at its disposal in order for the Tribunal to reject any appeal against the

publication of the memorial thereby proceeding with the release of its non-confidential version as soon as possible. It is only through these interventions that the Romanian population, as well as, prospective amici will have the opportunity to closely follow the developments in this case, which is of high relevance to them and to the future of Rosia Montana.

Respectfully yours,

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