

Public Participation in Environmental Decision Making in Romania

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ABSTRACT

This article researches the manner in which the participation pillar from the Aarhus Convention was transposed into Romanian legislation and how its provisions were applied to a highly controversial case. Thus, the paper will firstly address the general legal framework concerning participation in environmental matters as well as the challenges for the implementation of Aarhus Convention, followed by requirements for effective participation and NGOs involvement in the process. The main conclusion drawn is that public participation is generally seen only as a bureaucratic requirement that both authorities and the developer must meet before the project is adopted. In this context, the NGOs play a crucial role by acting as a real watchdog in identifying deficiencies in the application of the Convention. In order for enhancing implementation the authors emphasize the more proactive role that public authorities should have both with regard to the quality of environmental reports and with applying sanctions coupled with a stronger cooperation with the NGOs in the field.

Key words: Aarhus Convention, public participation

JEL: K32, L31

1 Overview of the legal framework

In Romania, the UNECE Aarhus Convention on Access to Information and the transposal of the Environmental Impact Assessment (henceforth EIA) and Strategic Environmental Assessment (henceforth SEA) Directives have been completed through the adoption of various legal norms. The very first of these was Order no. 619/1992 on the procedure for establishing the minimum content of the studies and the environmental impact assessment which also envisaged requirements for public information and consultation.

These improvements regarding the provisions for SEA/EIA are all the result of transposing the EU directives in this field.¹ Later on, with the signing and ratification of the Aarhus Convention, Law no. 86/2000² entered into force. However, despite these changes, it was only in 2012 that all the provisions concerning SEA and EIA were fully transposed.

The process of openness and transparency in government was further developed with the adoption of Law no. 52/2003, which is the framework law regulating participation to the decision-making process of public bodies and Law no. 554/2004 on the review of administrative acts. The latter one has undergone numerous changes, the last being in 2012 concerning remedies, which reflected various influences originating in the evolution of doctrine of Courts' practice and of European law.

During the following years, starting with 2006 there were several legislative efforts of creating a Code for administrative procedure, which was considered highly needed in light of the legislative instability. Among the proposals for the new code there was also one to include the procedural aspects of transparency, or to put it differently to abrogate the transparency law and to maintain only FOIA as special legislation. However this proposal has encountered great criticism from the non-governmental organizations (henceforth NGOs) who consider these two laws of paramount importance for the promotion of democracy and transparency in Romania and that they should remain separate from the general procedural law.

2 Challenges for the Implementation and Application of Aarhus Convention in Romania

2.1 General remarks

There are several provisions which regulate environmental policy in Romania as well as various agencies, which administer and enforce law in this field. The main authority is the Ministry of Environment and Forests, which is in charge of, among others: national environmental and water management policy-making, coordination and supervision of other authorities in connection with environmental protection activities, representation in connection with the achievement of Romania's obligations under the environmental protection related EU and bilateral/regional/international requirements. Moving onwards, the National Environmental Protection Agency, which has several regional and county subsidiaries, and the Administration of "Delta Dunării" Biosphere Reservation are in charge of environmental law implementation mainly regarding coordination of environmental permitting procedures. The environmental law enforcement authority, dealing mainly with verifying

1 SEA Directive 2001/42/EC, EIA Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

2 Published in the Official Journal of Romania no. 224, 22 May 2000.

compliance with environmental regulations is the National Environmental Guard with its subordinated local units. Actually many other authorities (e.g., other ministries, water management authorities, public health authorities, local public administration authorities, police authorities) depend on the environmental protection areas and activities.

In this context, one of the greatest challenges for the implementation of the provisions of Aarhus Convention is represented by the attitude of the public institutions which consider, especially regarding technical matters that technocrats know best what needs to be done, rejecting in this manner ideas from outside. However, the interaction with NGOs and media representatives, especially in highly publicized cases is slowly bringing a change in public authorities' approach. In Romania, NGOs are in fact the main actors which interact with public institutions in accessing environmental information and exercising their participation rights.³ Moreover, many times they are the ones interested and able to mobilize citizens.

Another problem in the mentality of the public authorities is that they don't see environmental laws as a mean towards protecting the environment. The public authorities' attitude towards solving environmental matters is perfectly illustrated by the actions taken in closing down garbage dumps that do not comply with the EU legislation requirements. In rural area, public authorities, which, most of them, lack financial resources and expertise, are silently encouraging citizens to deposit garbage on vacant plots at the outskirts of the communities instead of providing a new dumping facility and applying sanctions to people who do not comply with environmental regulations.

The above mentioned aspect is very much connected with another one which hinders implementation – weak administrative capacity at different levels. Administrative capacity is considered by various authors when discussing policy implementation challenges. Thus, administrative capacity at various levels, understood as all different types of resources, human, material, mentalities (Honadle, 2001), is considered the basic step in insuring effective implementation. Concentrating exclusively on the development of the legal framework, the premises for a "strained transparency or openness" are created – inability to cope with transparency and free access to information due to an absence of resources or a misunderstanding of information (Pasquier & Villeneuve, 2007).

In the context of European integration, Central and Eastern European countries focused during the public policy making process more on the adoption of the best legislation rather than on its implementation and adaption to the national context. Thus, a "missing link" of the process appeared (Dunn, Staronova, & Pushkarev, 2006). Furthermore, the distance between stated policy goals and

³ According to the statistics of the National Agency for the Protection of the Environment, the majority of persons applying for access to environmental information are NGOs.

the realization of such planned goals due to inadequate human and material resources, lack of continuity in government policies and corruption lead to an implementation gap.

Furthermore, most of the reforms in the former communist countries took place in a context guided by international actors who provided the principles for good governance and “exported” models of best practice regarding democratic governance, transparency, and citizen participation. Hence, most countries in transition saw the reforms as meeting the requirements of international organizations or the EU in the case of new candidate countries and less as a means toward achieving a more efficient government (Frost, 2003). In Romania this is perfectly illustrated by the manner in which the provisions of EU Directives, including the ones in environmental matters, were transposed into the national legislation, by mimics, although most of the times an adaption to national context would have been required. This leads to highly general and/or unclear legal provisions, which leaves room for discretion and implicitly for abuse from public authorities.

2.2 EIA Procedure and its application

The EIA procedure entails some mandatory phases stated in the G.D. no. 918/22 August 2002.⁴ Article 3 of the G.D. states that purpose of the Environment Impact Assessment, which is about establishing manners of reducing or avoiding the negative effects on the environment of the project assessed, and it determines the decision whether to approve or reject the project.

The Environment Impact Assessment procedure has three phases: (a) framing of the project in the EIA procedure; (b) defining the evaluation area and writing the EIA report and (c) analyzing the EIA report. The EIA is to be conducted with the help of the Technical Assessment Committee which is a non-permanent structure of experts designated by the central public authority for environment.

Firstly, the author must submit to the local environment authority a Project Presentation Report, containing the description and characterization of the area where the project is to be conducted and the description and the characterization of the project. This triggers the first phase - the framing phase. Based on this project presentation report, the competent authority decides whether they have to proceed with a complete EIA or if the project is small and harmless, they decide that such a measure is not needed and they grant the permit right away. The author has the obligation to inform both the authority and the public about his intention, and the public can make written observations and send them to the environmental authority responsible.

⁴ G.D. no. 918/22 August 2002 regarding establishing the framework-procedure for evaluating the impact on environment and approving the list of public projects which could be subjected to this procedure.

If the authority decides that they do have to go on with the procedure, they enter the second part. This decision can be contested by the public. The public authority, through the Committee, must offer the author of the project a collection of suggestions based on which they should carry on with the EIA study. This is comprised in the second part. Basically, the authorities state which are the most important concerns and the biggest threats, and they ask the project owner to put emphasis on these areas. The author proceeds to create an EIM Report, on the structure offered by the Committee, incorporating all the necessary information. In this report, they must answer the questions that the public addressed during the initial stage of the procedure. When the author submits this report, this second procedure is finished.

The last stage entails the review of the report. Here, it is necessary to consult the population, usually using public consultations and debate, but also written comments or complaints. Also, independent expert commissions can create their own report. Finally, it is up to the central environmental authority to assess the quality of the report and to reject it or accept it. If the report is rejected, it must be redone, and of course this entails that the project will not receive the environmental permit. If the report is accepted, the Ministry of Environment must state its decision concerning the environment permit, and make it public both to the author and to the public.

3 The Right to Participation in Environmental Matters

3.1 Legal framework for procedural rules applicable to public participation in environmental matters

It should be mentioned from the very beginning that there is an important difference with regard to participation rules applicable to normative instruments, plans and programs, and to specific projects. The difference lies in the consultation of the public. While in the classical case of a public authority issuing plans and programs, the authority is also responsible for conducting public participation procedures by itself, in the case of a plan or a project both the initiator and the developer are compelled to obtain feed-back from the public. Furthermore, NGOs have been constantly asking to replace the developer in organizing debates since the developer lacked interest in obtaining the public's feedback according to them.

There are three basic regulations which cover the procedural rules applicable to public participation in environmental matters. The first one is Law no. 52/2003 which is a framework law on transparency in the decision-making process of public administration bodies. This law deals both with the publicity rules to be followed during the adoption/drafting of administrative normative acts and the public participation to public debates organized by public administration bodies. One example of the latter is represented by regular proceedings of the local councils or public debates organized in order

to discuss various issues, including the draft of a normative act. Secondly, there is Governmental Decision no. 1076/2004 concerning the environmental evaluation for plans and programs and last Governmental Decision no. 445/2009 concerning the evaluation of the environmental impact of certain public and private projects,⁵ both which transpose the provisions of the EU Directives on SEA and EIA procedures.

These three regulations may work together, though with a different purpose. If, according to SEA rules, the environmental assessment is conducted during the drafting/preparation of the plan or program and is finalized before its adoption, the public body must comply with the publicity and participation rules which are generally requested before the adoption of an administrative act if the adoption is done by the government or a ministry. Hence these are procedural participatory rules concerning the SEA procedure and refer explicitly to determining the environmental impact of the program or plan before its adoption. Thus, the applicable rules concern the discussion of the act in its entirety and not just with reference to its environmental impact.

3.2 Requirements for effective participation

In Romania, the absence of a compensation mechanism turned public debate into an adversarial confrontation between the supporters of the developers and the public/NGOs. Furthermore, most cases of public participation are seen only as a requirement that both the authorities and the developer are compelled to meet before the project is adopted. The limits of this approach will be further seen when discussing the case study.

One step towards improving the participation and implicitly the quality of the debate and the outcome of the consultation is on one hand improving the quality of the environmental reports and of the accredited technical experts hired by the developer. As previously discussed developers are not generally interested in public participation and thus have no incentives in producing high quality environmental impact assessments. Hence, they hire an expert who facilitates the issuing of the development permit and not necessarily the one who does the best job in terms of assessing the environmental impact. Furthermore, according to the legislation in the field, all experts, once accredited enjoy the same level of recognized qualification.

Another step should be improving the quality of the environmental report drafted by the public authorities and their greater in-depth scrutiny for the protection of the environment. There are cases when studies do not meet the requirements envisaged by law but they still pass the evaluation done by public authorities. Thus, there is a need for increasing the quality of the entire

⁵ This last mentioned Governmental Decision is accompanied by a Joint Ministerial Order from 2012 concerning the approval of the implementing methodology.

assessment process in order for public participation to go beyond defense and consultation.

3.3 NGOs participation

As previously discussed in chapter two, NGOs, either national or in partnership with Green Peace, tend to be more active than citizens. This could be explained by the lack of participatory culture among community members, apathy and distrust in public authorities. The legislation in the field of environmental protection offers NGOs various possibilities to exercise their participation right.

According to national legislation and practice, associations, organizations or groups may form the public who, according to SEA legislation, can participate. Moreover, G.D. no. 564/2006⁶ regarding the establishment of the framework for the public's participation to the drafting/adoption of certain plans and programs concerning the environment gives NGOs broad participation rights during the SEA process by granting the decision-making public authorities the competence to identify the relevant public for participating in taking a certain decision. The criteria for this identification, with explicit reference to NGOs, are: their mission and representativeness (e.g. from a geographic point of view) in connection with the plan or policy. Public authorities have tried to limit NGOs' participation registered in one county to the SEA procedure taking place in a different region motivating the lack of concern in that respective matter.

EIA procedures make a distinction between the "public", defined above, and the "interested public" defined as to include the public affected or potentially affected by the assessment of the environmental impact and which has an interest in the said procedure.⁷ In the field of environment protection NGOs are considered to have an interest.

3.4 Timeframes for participation

Timeframes are of great importance when discussing participation for at least two reasons. On one hand, if a stage in the process of consultation is very lengthy the number of NGOs and individuals interested and implicitly involved in the case will decrease. On the other hand, very short timeframes (e.g. when impact upon a certain species is assessed) lead to incomplete evaluations. Thus, it is necessary to have reasonable timeframes for public participation. This subchapter aims at analyzing firstly the number of days/weeks the public has for participation in different phases and secondly the total length of various stages. Henceforth, a selection of provisions concerning various timeframes for public participation from both the framework law

⁶ Published in the Official Journal of Romania, no. 405, 10 May 2006.

⁷ According to G.D. no. 564/2006.

on transparency in decision-making in public administration and the specific national legislation on EIA and SEA procedures is presented, in order to see whether or not the timeframes can be deemed as reasonable.

Transparency in the decision-making of public administration bodies⁸

Every time public administrative authorities draft normative acts/instruments, a notice regarding their intention should be communicated to the public, with at least 30 days prior to its discussion and adoption. The notice should also include the possibility of the public to respond – it is necessary to allow at least 10 days for receiving written recommendations from the public. If public debates are organized during the adoption of the normative act, they should take place in no more than 10 days from the moment of the publication of notice comprising the place/date for the public debate.

Environmental Impact Assessment Procedure⁹

During the screening stage the competent public authority for the protection of the environment needs to identify the interested public within 15 days from the date when it was approached with a request for issuing the environmental agreement¹⁰ by the developer of the project, through publication on its website and on the premises of its main building. In three days after a decision is reached with regard to the screening of the project, the public authority posts on its website the draft of the decision and informs the developer about the obligation to inform the public. In its turn, the developer of the project has 3 days to publish the announcement in the local and/or national press, to place it in a public space at his headquarters as well as in the public authority's main building, and to post it on his webpage. The public has then 5 days to make comments concerning the draft project of the screening stage.

During the quality analysis of the environmental report stage, the notice regarding the opportunities for the participation of the interested public is posted on the websites of the public authorities responsible for the protection of the environment and those responsible for issuing the approval for development and placed in a visible spot at their headquarters with at least 20 days prior to the date when the public meeting is scheduled. The developer, in its turn, needs to publish

8 Law no. 52/2003 on participation in decision making.

9 Governmental Decision no. 1076/2004 concerning the environmental evaluation for plans and programs and last Governmental Decision no. 445/2009 concerning the evaluation of the environmental impact of certain public and private projects.

10 In Romanian *acord de mediu* – administrative act issued by the competent authority for the protection of the environment in which the conditions and/or the measures for the protection of the environment that need to be followed upon the development of the project are outlined.

in 3 days upon receiving the notice mentioned earlier, in the national or local press, to post it on his website/at his headquarters or the headquarters of the authority for the protection of the environment, and/or on the billboard placed at the project's site. The interested public can make recommendations up until the date of the public meeting (the public has at least 20 days). There are also shorter deadlines for the public to respond during this stage – 5 days to make comments regarding the notice for the granting of the environmental agreement to the developer.

Strategic Environmental Assessment Procedure¹¹

During the screening procedure, the initiator of the plan publishes in the mass media, twice, at a 3 days interval, and posts on his website the initial version of the plan, its nature, the starting of the screening procedure, the place/hour where the initial version can be found, and the possibility to make comments in writing at the headquarters of the authority for the protection of the environment, no later than 15 days from the date of the last/second notice. The competent authority for the protection of the environment also notifies the public about the starting of the screening phase by a post on its website and the possibility to make comments in the 10 days following the posting of the notice. The final decision is notified to the public by posting it on the website of the competent authority for the protection of the environment and by its publishing by the initiator of the plan in mass media (in no more than 3 days after the decision is made).

During the completion stage of the plan and the drafting of the environmental report, the initiator of the plan publishes in the mass media, twice, at a 3 days interval, and posts on his website the draft plan, the completion of the environmental report, the place/hour where the public can review them and the possibility for the public to issue written proposals to both the initiator's and the competent authority's headquarters in 45 days from the date when the last notice was published. The initiator has the same publicity obligations as described previously with regard to organizing a public debate on the draft plan, including the environmental report. The debate cannot be held any sooner than 45 days (60 if the plan has a trans-boundary effect) from the moment the notice is published.

The above excerpts from national legislation reveal a relative correlation between the various timeframes for publicity and public participation in relation to environmental matters. Thus, according to all three, public institutions, competent authorities for the protection of the environment,

¹¹ Governmental Decision no. 1076/2004 concerning the environmental evaluation for plans and programs and last Governmental Decision no. 445/2009 concerning the evaluation of the environmental impact of certain public and private projects

the initiator of a plan/program and the requester of an environmental agreement for certain projects have short deadlines to comply with publicity obligations. Hence, they usually have three days to notify the public with regard to a certain decision made or to post a draft version of a specific document on their webpages and at their headquarters. On the other hand, the public usually has fifteen days and in certain cases ten days to make comments. Furthermore, public debates are announced between twenty and forty-five days in advance.

There are also studies, conducted at the national level, which looked at the total number of SEA procedures conducted from 2004 to 2010 (UNDP) Table 1 and Table 2 below summarize this information.

Table 1: Number of SEA procedures with a time period greater than one year (for each development region, which at their turn include 4–5 counties)

Length	Bucuresti	Cluj	Bacau	Craiova	Pitesti	Galati	Sibiu
>1 year	4	9	8	13	11	46	39
>2 years	0	0	1	1	3	5	11
>3 years	0	0	0	0	0	0	3
>4 years	0	0	0	0	0	0	2

Source: UNDP, pp. 26–27.

Table 2: Mean values for the time periods necessary for the completion of different stages in the SEA procedure

Stages	Average number of days								
	Bucuresti	Bacau	Cluj	Craiova	Galati	Pitesti	Sibiu	Timis	National
From notification to public debate	337	196	320	283	201	216	263	290	263
From public debate to environmental approval	33	67	42	62	78	33	87	40	55,7
The entire procedure	370	264	362	345	272	253	348	297	314

Source: UNDP, pp. 27.

For EIA procedures, a sample of authorities and projects was examined by the same authors and the results were similar (UNDP, p. 30). Thus, the average duration for completing the EIA procedure from notification to the issuance date of the environmental permit is 237. For specific projects, the shortest timeframe was 37 days, at the regional branch of the National Agency for the Protection of the Environment Bacau, which also registers the project with the highest duration of EIA, 766 day. The highest average duration was registered

in Bucharest with 311 days. However, these timeframes are relevant only if compared with what happens in other countries. Hence, Romania generally has timeframes shorter than the average EU 27.

Stakeholders have formulated various opinions on the length of these procedures. On one hand, developers usually complain that they take very long. On the other hand, NGOs argue the same with the exception of cases when the impact upon certain species is assessed. For this later case NGO representatives consider longer timeframes necessary. In the end, no matter how big or small, the timeframe should allow a thorough evaluation of the environmental impact.

4 Case Study: the Rosia Montana Mining Project

Rosia Montana represents (McGrath, 2013) “[...] the story of the small village that has triggered Romania's biggest uprising since the demise of communism in 1989 - with protesters out on the streets in 75 cities worldwide: from Bucharest to London, New York to Shanghai.” Furthermore, the decisions adopted in this case and its final resolution will definitely have a great impact on future cases such as shale gas, which is another project under discussion in Romania. In an article from The Guardian, one of the leaders of the protest against the Rosia Montana gold exportation, declared (Ciobanu, 2013) “Rosia Montana is the battle of the present and of the next decades [...] People today [...] ask for an improved democratic process, for adding a participatory democracy dimension to traditional democratic mechanisms.”

4.1 General context

Rosia Montana¹² gold exploitation has been a highly controversial development project in Romania due to the degree of toxicity of the substances which shall be used in the process of extracting gold (Justice and Environment, 2011) by Rosia Montana Gold Corporation (RMGC), the current developer.

The project started in 1995 and is still in its preliminary phase of approval because of serious opposition from the civil society. The process has been a very lengthy one and involved a series of stakeholders both from the side of the developer and that of the NGOs. A short presentation of the actions taken by both parts will provide a general overview of the matters.¹³

In 1995, the Romanian public company Minvest and the Canadian private company Gabriel Resources Limited formed the partnership called Rosia

12 Rosia Montana area comprises 4 mountains and several villages from the communes Rosia Montana and Bucium in Transylvania, Romania.

13 For drafting this brief chronology the following sources were used: (1) Alburnus Maior (2) Gabriel Resources Project (3) the open letter “*The Romanian State – captive at Rosia Montana?*” which a group from the Economical Sciences Academy wrote to the President, Parliament and Government. For the period 2008–2012 information were gathered using the press monitoring technique.

Montana Gold Corporation for exploiting the old mine and leftover gangs from the Rosia Montana area. In 1999, Minvest received a license for exploiting the old mine at Rosia Montana and one year later it transferred the license to RMGC, action which was contested since a state-owned company cannot transfer the license to a private company. In the same year, the NGO Alburnus Maior¹⁴ was formed and in 2003 it started its first court action against Minvest for illegal drilling in the Carnic Massif, being also supported by the Romanian Academy, which declared itself against the mining project, and Greenpeace which began its protests.

In July 2002, the Local Council adopted the General Urbanism Plan (PUG) and the Zoning Urbanism Plan (PUZ), both documents being necessary for RMGC to initiate the procedures for starting the project. These documents were deemed illegal in 2005 by the Alba Iulia Tribunal and in 2008, 2010 and 2012 by the Alba Iulia Court of Appeal after the Local Council or the County Council repeatedly granted new certificates to RMGC.

Furthermore, in March 2004, the Environment Protection Agency from Alba issued an archaeological discharge certificate for the Carnic Massif which was challenged in court by Alburnus Maior and found illegal by Alba Iulia Court in 2005 and irrevocably annulled by Brasov Court of Appeal.

In 2005, RMGC submitted the Project Presentation Report for the Rosia Montana Mining Project to the Environmental Protection Agency in Alba. This triggered the initiation of the Environment Impact Assessment procedure. Around 120 NGOs and individuals expressed their intentions to participate in the EIA. In February 2006, Alburnus Maior issued a document entitled "Undermining Rosia Montana?" accusing the state authorities of favoritism in this project. In April, the Romanian Minister for Environment Protection met the EU Commissioner for Environment and, at this occasion declared that the EIA procedure in the Rosia Montana project was suspended, the reason being that the PUG and PUZ were not valid. Only a month later RMGC submitted its EIA report. In the following period, several public consultations occurred both in Romania and Hungary and Alburnus Maior presented its own version in an Independent Expert Analysis. In 2007, Alba Iulia court declared the illegality of 192 drilling points in the Rosia Montana and Bucium Communes.

In 2012, the Government announced that any decision about the Rosia Montana Project will be postponed until fall of 2012, after the parliamentary elections. In 2013, the Government tried to initiate in Parliament a Law for the sole purpose of this project, but due to street manifestations the adoption was postponed. The solution envisaged now is to deal with the project within a more general Law of the mining industry.

¹⁴ Alburnus Maior is in fact the name of Rosia Montana during the Roman Empire, when it was founded as a mining town.

What is striking however about this entire process is the lack of participation of the general public in the decision making of the government regarding the Rosia Montana mining. Hence, there were no consultations regarding finding the best-agreed solutions on this issue. Even since 2003 two different sides, which confronted each other, were established. On one hand, there were NGOs and environmental activists, who gradually gathered more and more supporters from the public. They have continuously protested against the mining project by taking matters to various Courts and organizing massive street protests. On the other hand, there were politicians and mining companies, who were advocating job creation, financial investment and above all the lack of negative effect of the mining process.

In this confrontation, the media was used by both parties to promote their views. International media reported this process as: "through aggressive PR and media campaigns the parties set to profit are doing all they can to pacify, oppress, and deceive opposition to the mine" (McGrath, 2013) and that "protesters [...] have skillfully kept the public informed and engaged via Facebook".¹⁵

4.2 Legal provisions applicable to the Rosia Montana case

The main law in force at the beginning of the Rosia Montana Mining Project Assessment was the Environment Protection Law no. 137/1995. This law clearly states in Article 8(6) that public or private projects which may have a significant impact on the environment must pass through the EIA procedure. Furthermore, Article 12(3) states that consulting the public in such projects is mandatory. The legal documents which regulate the EIA procedure in Romania are the Government Ordinances no. 863 and no. 864 of 26 September 2002, issued by the Ministry of Environment. One of the ordinances approves the EIA procedure and the other approves its methodology.

In 2003, the law on transparency of decisions in public administrations, Law no. 54/2003, was issued and represented another very important tool for citizens. This piece of legislation clearly states that citizens have the right to ask for any public information and they should be given an answer in an appropriate timeframe. Another important piece of legislation was the Governmental Decision establishing the procedure of environment evaluation for plans and projects.

All these were active in December 2004, when RMGC submitted the necessary documents for starting the EIA procedure. In July 2005, another very important Governmental Decision was added to the current legislation, which basically transposes the provisions of the Aarhus Convention, by stating that the public has the right to be informed and to receive information when they request it, concerning the state of the environment and the effects of

¹⁵ Ibidem.

different projects with impact of environment. The most interesting part about the Romanian environment legislation is the fact that this document that applies the Aarhus Convention actually holds no provision whatsoever on the right of the public to participate in decision making. The document that does contain provisions connected to that is the Minister Order no. 864 of 26 September 2002 approving the EIA procedure. Nevertheless, a lot of focus is placed on the transborder interested parts and less on the citizens of the country. Thus, the way the Aarhus Convention was translated to national legislation has been flawed. A more refined regulation concerning the EIA emerged in 2004 – the G.D. no. 1076/2004.¹⁶

4.3 Abiding by the provisions of the Aarhus convention

As previously stated, the mechanism that controls whether the Convention was respected or not is the Aarhus Convention Compliance Committee (ACCC).¹⁷ A complaint was filed to this body by Alburnus Maior on the 5th of July 2005 and it was solved by the Committee on the 16 April 2008 (Compliance Committee, n.d.).

According to this document two of the three pillars of the Aarhus Convention were breached, namely access to information and participation of the public in decision-making. The right to participate was breached on three accounts. Firstly, when the EIA procedure began, the competent authority failed to inform individually all the participants that subscribed to the process. They only published the documentation on their website. According to the Convention, all the interested parties should have been duly notified especially since some of the parties do not speak Romanian, they could not get the necessary information from the website. Secondly, Alburnus Maior contested the fact that the written complaints in the scoping phase were not included in the inquiries for the applicant. Third, the organization complained about the quality of the public debates. The biggest shortcomings of these debates were that they were not conducted in all affected localities (for example in the Bucium commune), that the moderators were not impartial, that the timeframe for a speaker was insufficient and that the author simply did not answer the questions for the floor, just trying to make propaganda for the project. Also, the organization complained that the minutes of the meetings were taken incorrectly by the Ministry of Environment and by RMGC and these discrepancies can be noticed if one compares the videos with the written reports. The last complaint was again that some of the questions addressed by the participants in the public debates were not answered or even acknowledged later on by the author of the project.¹⁸

¹⁶ The Governmental Decision no. 176/2004.

¹⁷ The entire documentation of the process, as well as the rulings can be found on a webpage of the Aarhus Convention.

¹⁸ All of these accusations and complaints can be found in the document Alburnus Maior (2007).

5 Final Considerations

The research has provided an overview of the importance granted by each stakeholder to environmental matters. As stated in the beginning of this article the public authorities view participation as a hassle, something they need to comply with by doing the minimum required by law. Implicitly, the quality of their work (e.g. drafting environmental reports, organizing debates) is in most cases very low. The debates unfolded at Rosia Montana has also been about economic interests over environmental matters, an aspect which is very often in seen in developing countries, where environmental matters are very often considered secondary in relation to economic development opportunities. Furthermore, the research has once again reinforced the idea of NGOs' importance in public participation and decision making and the decisive role played by them in mobilizing citizens and taking concrete actions.

Thus, in order for enhancing the implementation of Aarhus Convention, the authors emphasize the more proactive role that public authorities should have both with regard to the quality of environmental reports and with applying sanctions coupled with a stronger cooperation with the NGOs in the field.

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POVZETEK

1.02 Pregledni znanstveni članek

Udeležba javnosti pri okoljskih odločitvah v Romuniji

Ključne besede: Aarhuska konvencija, udeležba javnosti

Članek raziskuje, kako je bil steber sodelovanja javnosti iz Aarhuske konvencije prenesen v romunsko zakonodajo in kako so bile njene določbe uporabljene v zelo spornem primeru. Članek najprej obravnava splošni pravni okvir sodelovanja v okoljskih zadevah kot tudi izzive uvajanja Aarhuske konvencije in zahteve za učinkovito sodelovanje in vključenost nevladnih organizacij v proces. Glavna ugotovitev je, da se na sodelovanje javnosti na splošno gleda samo kot na birokratsko zahtevo pred sprejetjem projekta, kiji morajo zadostiti tako organi oblasti kot nosilec projekta. Tukaj imajo nevladne organizacije ključno vlogo, da delujejo kot dober nadzornik pri identifikaciji pomanjkljivosti uporabe konvencije. Avtorji poudarjajo, da bi bila za izboljšanje izvrševanja konvencije potrebna bolj proaktivna vloga javnih organov glede kakovosti okoljskih poročil in izvajanja sankcij ter boljšega sodelovanja s področnimi nevladnimi organizacijami.

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