

CASE REPORT \_\_\_\_\_

**Gold Mining in Roșia Montană (Romania): Billion dollar business vs. residents and the environment?**

For more than 2000 years, gold has been mined in and around the Romanian village of Roșia Montană. For almost 20 years, residents and environmentalists have been in a dispute with the Roșia Montană Gold Corporation (RMGC) over whether Europe's largest gold mine should be set up in the area. In 1999, RMGC received an exploration license from the Romanian government for this project. Since then, residents and environmentalists have been opposing the plans – they fear forced relocation, environmental harm and the destruction of one of the country's most important archeological sites. Resistance in the form of political campaigns and legal actions led to the project being halted on several occasions.

RMGC, which is owned 81% by the Canadian corporation Gabriel Resources and 19% by the Romanian company Minvest Roșia Montană, refuses to accept the Romanian courts' decisions. Instead, Gabriel Resources submitted a petition in 2015 to the International Center for Settlement of Investment Disputes (ICSID) based at the World Bank, suing the Romanian state – and thus, Romanian tax payers – for compensation of circa \$US3.3 billion plus interest.

ECCHR is supporting Romanian civil society in their fight against the mining project. A [legal opinion](#) was submitted to ICSID presenting the perspective of the affected population and relevant human rights obligations of the corporation.

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## **Global context: Human rights violations in extractive industries**

All around the world, the extraction of resources often goes hand in hand with serious human rights violations. Entire villages are forcibly relocated without adequate compensation; pollution destroys the livelihood of local communities and damages their health. People who resist these circumstances often face threats and criminalization.

It is the poorest of a society who suffer the most as a result of extractive industries. Meanwhile, the profits in many cases do not stay in the country but go to foreign investors. The power imbalance between the winners and losers of resource extraction is reinforced by a structural imbalance in the international legal system: investors have access to international arbitration to safeguard their interests against states through a web of bilateral investment treaties (BITs). People affected by mining are not involved in these proceedings and do not have access to comparable instruments to protect their rights.

BITs have been criticized by civil society for a long time as the proceedings lack transparency and the treaties are usually interpreted in a very investor-friendly way without sufficient consideration of human rights or other social and environmental standards. For example, government measures for the protection of people or the environment are sometimes interpreted as a violation of the standard of “fair and equitable treatment” leading to the state in question being forced to make huge compensation payments to a corporation. This creates a “chilling effect” whereby states fear potentially having to pay compensation and refrain from taking any protective measures in the first place.

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## **The situation in Roșia Montană**

The project would see gold in Roșia Montană extracted by open pit mining – meaning not underground but by the large-scale removal of soil and the use of highly toxic cyanide. For this purpose, RMGCs plans to level four mountains and construct a reservoir to collect 200 tons of wastewater containing cyanide. As Roșia Montană is located in a region abundant in water whose rivers flow into the Danube, the project was linked with serious environmental risks from the beginning. This alarmed local residents and environmentalists, particularly since

in 2000, a gold mining accident in northwest Romania caused an environmental catastrophe. Cyanide leaked from the Baja Mare mine, contaminating the water of 2.5 million people and killing 1.200 tons of fish.

In addition to the environmental risks, the local population is concerned about the planned resettlement of three villages. Large parts of the population do not wish to resettle and, under Romanian law, cannot simply be expropriated. The residents consider that there are serious issues with both the project planning and the compensation offered.

Last but not least, gold mining has been part of the history of Roșia Montană village for more than 2000 years. One of the most important archeological sites of Romania – reaching back to pre-Roman times – is located in Roșia Montană and is threatened by the proposed open pit mine.

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## **Resistance from civil society**

In 2000, members of the affected population in Roșia Montană – responding to the predictable difficulties and issues linked with plans for the large mining project – formed the association [Alburnus Maior](#). Co-founded by Alburnus Maior, the “Salvati Roșia Montană” (Save Roșia Montană) initiative is currently the largest social movement in Romania with more than 100,000 supporters. One of the first successes of the campaigns of this initiative saw the International Finance Corporation, part of the World Bank Group, reject an application to fund the mining project. The bank named concern over a lack of control of pollution and the planned relocation of residents as reasons for the rejection.

From the beginning, activists also worked with Romanian lawyers. They initiated several lawsuits against the project, pointing to violations of national laws and the rights of the local residents. One example is the successful lawsuits against the 2004 decision by the Romanian Ministry of Cultural Affairs to revoke the protection of the archeological sites. Last but not least, this civil society engagement led to the revocation of several permits after judges concluded that these permits contradicted binding national rules and international conventions.

Victor Ponta’s government responded to the ongoing legal proceedings with a proposal in 2013 for a special law facilitating the mining project. The proposal was based on a compromise between the Romanian government and Gabriel

Resources which lowered national standards for the protection of the environment, archeological sites and affected third parties. Thanks to the civil society resistance, the law was not passed by the Romanian parliament. The subsequent government under Dacian Carlos did not pursue the plan any further. Instead, in 2016, the government proposed a law that would ban the use of cyanide in mining. They furthermore made plans to include Roșia Montană in the list of places to be considered as UNESCO world heritage sites. A recognition as a world heritage site would ensure the protection of the region and make the proposed mining project impossible. However, the government halted the application in June 2018 – apparently influenced by the pending legal action from Gabriel Resources.

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## **Gabriel Resources' responsibility**

According to those affected, Gabriel Resources' actions violate Romanian law as well as international human rights standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. According to these principles, companies are obliged to respect human rights and to employ due diligence to assess the human rights impact of their operations. This includes meaningful consultation with affected people, in this case the residents of Roșia Montană. Even though Alburnus Maior and other NGOs clearly stated their concerns, the company held only a few superficial discussions with the local residents. Gabriel Resources tried to create “facts on the ground” as quickly as possible and to intimidate opponents of the project. The company filed several (unsuccessful) lawsuits against activists and critical journalists. These intimidations along with empty promises, the immediate destruction of acquired houses, the enticing away of doctors and teachers, and the targeted purchases of historical buildings and cemeteries created a climate of hopelessness in Roșia Montană. This behavior violates the company's obligation to respect human rights and environmental standards as set out in the UN Guiding Principles and the OECD Guidelines.

## The ICSID proceedings

As resistance by the local community in Roșia Montană and civil society organizations made the mining project more and more unlikely to proceed, Gabriel Resources in July 2015 initiated proceedings at the ICSID at the World Bank.

In these proceedings, Gabriel Resources seeks compensation of \$US3.3 billion from the Romanian state. The company bases the claim on an alleged violation by the state of provisions of the Canadian-Romanian Bilateral Investment Treaty. The precise allegation is that Romania stalled and “politicized” the process of obtaining permits and had arbitrary and discriminating requirements for the use of cyanide. Additionally, Gabriel Resources contests the inclusion of the archeological sites in Roșia Montană in a list of historically important areas and the rejection of the compromise legislative proposal by the Romanian parliament.



Submitting of the amicus curiae brief to the ICSID © Photo: CIEL

The proceedings are still pending at ICSID. In November 2018, a coalition of NGOs including Alburnus Maior from Romania, [Greenpeace Romania](#) and the Independent Center for the Development of Environmental Resources ([ICDER](#)), supported by ECCHR, submitted a legal opinion to ICSID. This opinion sets out the perspective of the local population and the human rights abuses of the company. The organizations call on the arbitral tribunal to reject the claim based on the human rights abuses by Gabriel Resources. In December 2018, the tribunal decided to admit the legal opinion to the proceedings. This admission does not guarantee that the content of the opinion will be considered in the decision. However, due to the lack of any other means for the affected people to participate in the proceedings, the legal opinion is currently the only way to influence its outcome. The first hearing in the ICSID proceedings is planned for December 2019, a decision is expected no earlier than 2020.

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