

## AMICUS CURIAE SUBMISSION

by **Centrul Independent pentru Dezvoltarea Resurselor de Mediu**  
and

**Greenpeace Romania**

*Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*

ICSID Case No. ARB/15/31

This submission offers factual information showing that a.) Claimants' Observations dated October 18, 2022<sup>1</sup> are incomplete and not correct on multiple occasions b.) UNESCO status is not definitive, nor does it stop the State from choosing a different direction of development; including mining – as shown via examples and c.) Gabriel's stock market capitalization between July 29, 2011, and January 31, 2012 fails to reflect a significant risk.

### **a.) Claimants' Observations dated October 18, 2022 are incomplete and not correct on multiple occasions**

i.) Claimant Observation Para. 5.) - The Romanian state via Minvest exploited the Cetate massif from 1970 to 2006. As part of nationalization and the state decision to exploit Cetate's gold in 1970, the council of ministers<sup>2</sup> of the Socialist Republic of Romania issued on 2 February 1970 Government Decision No. 53 which removed Cetate from the list of natural monuments.<sup>3</sup>

This however, does not evidence that Roşia Montană's listing on the List of Historic Monuments (LHM) of 1992 is not correct. It lists the Roman mine galleries in existence in 1992. The LHM of 1992 is not a draft "that was never issued, implemented or formally approved." The LHM of 1992 was approved by the National Commission for Monuments and Historical Sites on September 25 1991, so that by January 1992 its transmission to all counties would be completed. To this very day it can be accessed as such via the website<sup>4</sup> of the Ministry for Culture's National Institute of Patrimony. Government Order No. 589/D/1992-130/1991 published in the Official Gazette via No. 8/28 January 1992<sup>5</sup> on required measures to prevent the degradation, destruction, as well as the protection of immovable assets with heritage value reads in article 1: "Monuments, ensembles and historic sites are those entered on the lists approved by the National Commission for Monuments and Historical Sites." Article 60 (1) of Law

---

<sup>1</sup> [http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C4706/DS18604\\_En.pdf](http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C4706/DS18604_En.pdf)

<sup>2</sup> The institution of the Council of Ministers was, according to article 42 of Romania's Constitution from 1952 "the supreme executive and the disposition body of state power of the Socialist Republic of Romania."

<sup>3</sup> Point Nr. 30 at <http://arhivelenationale.ro/site/download/inventare/Comitetul-Central-al-Partidului-Comunist-Roman.-Sectia-Cancelarie.-Hotarari-ale-Consiliului-de-Ministri.-1970.-Inv.-3371.pdf>

<sup>4</sup> <https://patrimoni.ro/ro/articles/lista-monumentelor-istorice> / <https://patrimoni.ro/images/lmi-old/lmi-alba-1991.pdf>

<sup>5</sup> [https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_mof?idp=828](https://www.cdep.ro/pls/legis/legis_pck.lista_mof?idp=828)

422/2001 on historic monuments<sup>6</sup> certifies and confirms that the LHM of 1992 was in force and produced legal effects: “The list of monuments, ensembles and historical sites, approved by the National Commission for Monuments, Ensembles and Historic Sites in 1992, with subsequent amendments and additions, remains in force.”<sup>7</sup> Failure to comply comes with sanctions according to article 11 (2) of Law 422/2001 “Abolition, partial or total destruction, desecration, as well as degradation of historical monuments are prohibited and sanctioned according to the law.”

The above laws are publicly available since their release meaning that Claimant (and shareholders) was aware of them from an early stage in the Project design. Discrediting LHM 1992 as never “issued, implemented or formally approved” is incorrect.

ii.) Claimant Observation Para. 6.) - Rather than lacking legal justification, the 2010 LHM listing Cârnic’s mining galleries as historical monuments, reflects the annulment of ADC 4/2004.<sup>8</sup>

iii.) Claimant Observation Para. 8.) - Dr Beatrice Cauuet, in charge of the archaeological research related to mining and lead author of the 2002 research Report entitled ‘Ancient Goldmines of Dacia’,<sup>9</sup> lists on page 67-68 the work still ahead such as archaeological prospecting of Cârnic 8 and numerous finalizations. Research had not been completed and future work planned which explains why page 68 of ‘Ancient Goldmines of Dacia’ does not include Dr Cauuet’s recommendation and signature to discharge Cârnic. ADC No. 4/2004 is not a reflection of Dr Cauuet’s recommendation. Even if the Claimant claims that “that assertion is false” here is a soft admission in point 9.).<sup>10</sup>

The proof that the archaeologist in charge had not recommended Cârnic’s archaeological discharge led, amongst further reasons, to the final annulment of ADC 4/2004 following litigation carried out by NGOs.<sup>11</sup>

In comparison, from the court case that led to the annulment ADC No.9/2011 the *amici* know that Mr Cauuet’s report dated 2009<sup>12</sup> recommended Cârnic’s partial archaeological discharge, listing the

---

<sup>6</sup> <https://legislatie.just.ro/Public/DetaliiDocument/29761>

<sup>7</sup> <https://legislatie.just.ro/Public/DetaliiDocument/29761>

<sup>8</sup> Romania’s Supreme Court confirmed the ruling via a final decision stating that: “The exploitation of parts of Cârnic is incompatible with the obligation to protect the Roman galleries discovered in the area. Their integrity would be affected [...] the area’s underground is of great archaeological interest; being one of largest ancient Roman mining centres ever discovered.” The High Court of Cassation and Justice, The Administrative and Fiscal Contentious Department, Decision No. 4607 (Dec.9, 2008)

<sup>9</sup> <https://web.archive.org/web/20050902225147/http://rosiamontana.org/documents/archeology/report/report2002.htm>

<sup>10</sup> Point 9.) *Claimant’s Response dated October 18, 2022 to Amicus Curiae Brief dated September 18, 2022*: “But Dr Cauuet’s expert team also did further research and digital mapping of Cârnic from 2004-2006, after issuance of the first ADC, which she described in her 2009 final preventive archaeological research report.” Italics are the amici’s.

<sup>11</sup> Brasov Court of Appeal, Sentence No. 157/F/CA (Nov. 26, 2007).

<sup>12</sup> Rapport de Cercetare Arheologica Preventiva Masivul Cârnic, Roşia Montană, România Proiectul Minier Roşia Montană Document Final de Sinteză 2009.

coordinates for discharge and for *in situ* protection. The recommendation for discharge is signed by Mrs Cauuet.

iv.) Claimant Observation Para. 9.) - The change to Cârnic's perimeter was made in 2011, after the public consultations part of the EIA (2006 and 2007).<sup>13</sup> The change was made at a time when RMGC needed to replace the cancelled ADC 4/2004 and from a legal point could not obtain an ADC for an identical perimeter as the one cancelled.

**b.) examples show that UNESCO status is not definitive, nor does it stop the State from choosing a different direction of development, including mining.**

v.) Claimant Observation Para. 11.) - Claimant included the Buzău ruling as one of its main arguments for the Tribunal to allow new evidence<sup>14</sup> arguing that “The legal challenge to the second Cârnic ADC is significant to the Parties’ arguments, including the arguments in relation to Romania’s UNESCO nomination despite the valid and existing ADCs (Claim. 05.08.21)” and again when submitting new evidence.<sup>15</sup> If the Buzău ruling has relevance to this present arbitration, then so has the final ruling over the same case. *Amici* do not intend to make a legal argument to the Tribunal. Instead, they simply suggest that Claimant’s statements are contradictory and confusing when one court ruling is supposed to be relevant while the second one, on the same subject matter, is discarded simply because it is not supporting its position.

vi.) Claimant Observation Para. 12.) - Romanian regulation for UNESCO World Heritage sites is different from the one for historical monuments as not all monuments are automatically UNESCO World Heritage sites. If the State were to remove Roşia Montană’s archaeological sites from the list of historical monuments, it would make little sense for the State to keep them on the list of World Heritage sites because UNESCO explicitly requires that the elements included are legally protected by the State.<sup>16</sup> Regarding the issuance of a construction permit as can be seen from recent examples, UNESCO status is not definitive; it can be revoked or be given up unilaterally. When Dresden (inscribed as a UNESCO site in 2004) opted for a development project incompatible with UNESCO status and requirements, it was removed from among the World Heritage Sites (WHS) five years after its nomination.<sup>17</sup> In addition to being a WHS, Roşia Montană is also listed on UNESCO’s World Heritage in Danger<sup>18</sup> list meaning

---

<sup>13</sup> <https://unece.org/DAM/env/pp/compliance/C2005-15/communication/addInfo20070220.doc>

<sup>14</sup> [Procedural Order No. 35 September 30, 2021](#)

<sup>15</sup> [Claimants’ Observations on New Evidence October 29, 2021](#)

<sup>16</sup> art. 4 of UNESCO [Convention concerning the Protection of the World Cultural and Natural Heritage](#)

<sup>17</sup> <https://whc.unesco.org/en/news/522>

<sup>18</sup> <https://whc.unesco.org/en/decisions/7945>

that the property is monitored by the World Heritage Committee (WHC) whose recommendations are crucial for keeping the UNESCO status. If the State does not act upon the WHC's recommendations and lets the site degrade, then this attracts - as in the case of Liverpool<sup>19</sup> - the withdrawal of UNESCO status. Both examples show that a UNESCO status is neither definitive, nor does it stop the State from choosing a different direction of development; including mining or any other scenario that is not necessarily compatible with preserving and promoting heritage of this importance.

**c.) Gabriel's stock market capitalization between July 29, 2011, and January 31, 2012 fails to reflect a significant risk**

vii.) Claimant Observation Para. 14.) & ff. - Between July 29, 2011, and January 31, 2012 Gabriel released three press releases and two MD&A's. The press releases are dated 3 August 2011, 2 November 2011 and 29 December 2011.<sup>20</sup> The MD&A's are dated 3 August 2011 and 1 November 2011.<sup>21</sup>

a.) Among the legal provisions applicable for the Project counts the Water Framework Directive 2000/60/EC<sup>22</sup> (WFD 2000/60/EC) transposed into Romanian law via Emergency Order No. 3 of 5 February 2010.<sup>23</sup>

The Project foresees diversion works on two rivers. This means that the Project can only go ahead if all the conditions under the Water Framework Directive article 4(7) are fulfilled. The Project being of "overriding public interest" is one condition.<sup>24</sup> (The Project should have also been included in the river basin management plan and therefore subject to a public consultation. And this was not the case... In addition, there is a need to include all practicable mitigation measures and to make the appropriate assessments to ensure that there are not better environmental options.). None of the Gabriel press releases and MD&As between July 29, 2011, and January 31, 2012 mention that the Project design requires it to be declared of "overriding public interest."

This is relevant because it shows that the commercial proposal as designed by the Project Owner, required to be declared of "overriding public interest" to meet the EU Water Framework Directive 2000/60/EC needed to obtain the environmental permit. And the Project Owner had ample time to adjust Project design according to Romanian and European laws.

---

<sup>19</sup> <https://whc.unesco.org/en/news/2314>

<sup>20</sup> Accessed via [Welcome to the SEDAR Web Site / Bienvenue au Site Web SEDAR](#)

<sup>21</sup> Ibid.

<sup>22</sup> [EUR-Lex - 32000L0060 - EN - EUR-Lex \(europa.eu\)](#)

<sup>23</sup> [OUG 3 05/02/2010 - Portal Legislativ \(just.ro\)](#)

<sup>24</sup> [Ares\(2016\)6478520 - 17/11/2016](#)

The source [Ares \(2016\) 6478520-17/11/2016](#) is relevant because it shows that the EU Commission was closely exchanging with Romania's ministry for the Environment and that it was closely watching developments related with the ongoing EIA procedure.

Respectfully submitted on May 30, 2023 by

Dan Mercea  
President  
Centrul Independent pentru Dezvoltarea  
Resurselor de Mediu  
[contact@miningwatch.ro](mailto:contact@miningwatch.ro)  
+40 364 104 706  
Str. Traian No. 69-71 apt 27  
Cluj Napoca / Romania



Valentin Salageanu  
Executive Director  
Greenpeace Romania  
[valentin.salageanu@greenpeace.org](mailto:valentin.salageanu@greenpeace.org)  
+40 735 165 472  
Louis Blanc No.16  
Bucharest / Romania

