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Communication to the Aarhus Convention's Compliance Committee

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I. Information on correspondent submitting the communication

Complainants:

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II. State concerned

Romania

III. Facts of the communication

The lignite quarries in Gorj County have started being exploited since the communist era, in the 1960's. In 2011, the operator, a state owned company, currently called SC Oltenia Energy Complex SA (OEC), decided to extend the quarries on large areas. For the extension of the quarries, the company refused to conduct any public consultations, not even in the initial environmental permitting framework because they considered that it was not necessary because their operation had started over 20 years ago and the company had already obtained the mining licence. The OEC only submitted an EIA permit request for deforestation of the areas where the mines would expand and they

developed the entire quarry expansion based only on several decisions of the Forest and Hunting Inspectorate (currently called The Forest Guard).

Considering that the entire procedure is illegal both from the public participation perspective and from the environmental legislation point of view, we started several cases in court, as it follows:

- Injunctive relief for the environmental permits issued only for deforestation as well as annulment cases
- Injunctive relief for several of the decisions of The Forest and Hunting Inspectorate as well as annulment cases

All of the injunctive relief procedures were rejected by the national courts, stating that the cases are not well justified and we were not able to prove that immediate damage might occur if the administrative acts are not suspended.

The annulment cases took longer, but the courts annulled all the environmental permits and the decisions of The Forests and Hunting Inspectorate. All the cases are final, only two of them are still pending at the appeal.

In the end, OEC claimed that the entire forest was already destroyed by the time the cases were decided on in court.

In total we have submitted:

- 8 cases regarding injunctive relief for the decisions of The Forests and Hunting Inspectorate and 8 for the annulment of these decisions
- 5 cases regarding injunctive relief for the environmental permits and 5 for the annulment of these decisions

After a complaint to the European Commission concerning the violation of the EIA Directive, the company was forced to carry out EIA procedures for the extension of all 10 lignite quarries involved (Pinoasa, Roșia, Peșteana Nord and Peșteana Sud, Lupoia, Tismana I, Tismana II, Jilț Nord, Jilț Sud, Roșiuta).

The EIA procedures are now finalized and the environmental permits have been issued for most of the pits. However, during these procedures the public was not properly consulted. Both us and the people living nearby have contested the consultations procedure to the Environmental Protection Agency due to various aspects:

- The documentation for the extension of the mine was not accessible. Even the documentation posted on the internet by the Environmental Protection Agency was not complete. Many documents remained uncommunicated before the decision to issue the environmental permit was taken. The population in the affected area was not even able to see the very few documents posted on the EPA's website because people in the villages generally don't have the means nor the knowledge to access internet.

- The public debates were organized without proper dissemination of information – most of the public directly affected by the development of the quarries were not informed in due time, or they had no means of transportation to the places where the public debates were held.
- The arguments of the public were not assessed properly and were rejected without scientific arguments.

Together with the villagers from two of the most affected villages, we sent a complaint to the Gorj County Environmental Protection Agency asking that another round of public consultations is organised, for the villages that are located more than 10 km away from the places where the meeting had been organised, because the population had no means of public or private transportation to these places and they were not aware of the date when the public debate had been organised (please find attached the complaint). The Environmental Protection Agency dismissed the complaint and issued the environmental permits without further public consultation.

IV. Provisions of the Convention relevant for the communication

1. Violation of art. 6 in relation to:

a. The deforestation decision issued by the Forest and Hunting Inspectorate, (currently called Forest Guard)

Before such decisions were issued, no public consultation procedure was organised. We sent requests to the Inspectorate to be notified when such decision is issued but we were never informed.

b. The public consultation organized during the EIA procedures

During the EIA procedure the public was not able to participate in a meaningful manner in the decision making process. The documentation was not published entirely, the public debates were organised very far, where many villagers were not able to travel. The location is very far and highly inaccessible because of the lack of reasonable public transportation and because of the poor state of the public roads in the quarries' area.

2. Violation of art 9.4 of the Aarhus Convention

a. Adequate and effective remedies

There are no adequate and effective remedies in the Romanian legislation, specific to the environmental law cases. The classical access to justice procedure does not establish an adequate and effective system to prevent the destruction of the environment. The courts have no procedure that would ensure

real remedies for the environmental violations. There is no other body that is able to act against the unlawful implementation of projects that are likely to harm the environment. The National Environmental Guard is not competent to act unless the operator is violating the content of the already issued documents or if the activity is not authorized. In cases as the one we have presented here, only the court of justice can decide if the activity was legal or not.

b. Injunctive reliefs

The injunctive relief procedure is not mentioned in the Romanian translation of the Aarhus Convention. The” term” adequate and effective remedies, including injunctive relief as appropriate” translates only as ”to ensure adequate and effective remediation *including court decisions*”. The meaning of the term injunctive relief is completely misinterpreted.

As a result, the Romanian injunctive relief procedure, called suspension of the effects of an administrative act, is not likely to be ever applied to an environmental case. The conditions that must be proved according to art. 14 and 15 from the Law 554/2004 regarding the procedure in the administrative courts involve proving: a well justified case and imminent damage. The court is not allowed to analyze any legal argument that would forestall the decision in the annulment case. The damage must be proven, and providing only the argument that some environmental factor might be damaged is not acceptable in court. There is no admissible evidence in an environmental case other than that which relates to the arguments against the legality of the administrative act or that would prove the effective and imminent destruction of the environment without forestalling the annulment case.

The consequences are a complete lack of access to justice in environmental cases. The court dismissed all the injunctive relief cases (8 cases for deforestation decisions and 5 for environmental permits) and by the time the final decisions have been made by the administrative courts by annulling the permits, the environmental factors the cases were aiming to protect, have already been destroyed.

c. Timely

The duration of the environmental cases in court is very long, there are no special procedures for the environmental cases that could speed up the time needed to reach a final decision.

Regarding the 8 injunctive reliefs, the competent court, Buftea Tribunal, registered the cases in October 2013. The final decision was reached by The Court of Appeal from May 2014 to February 2015 (please see the inserted table).

Regarding the annulment cases, they took about 2 years to reach a final decision. All the environmental permits were cancelled. All the „INJUNCTIVE RELIEF” procedures were rejected. Please see the attached table for details. The courts were very late in trying such cases so that the unlawful environmental destruction took place anyway.

In conclusion we ask the Committee to assess whether the Aarhus Convention was violated regarding:

1. Public participation procedure – for lack of public participation in the deforestation decisions issued by The Forest and Hunting Inspectorate (currently called Forest Guard) and also lack of public participation of the public in the environmental permitting procedures regarding the extension of the lignite quarries.
2. Access to justice: lack of injunctive relief procedure, lack of adequate and effective remedies and untimely court proceedings.

Annexes:

1. Complaint to EPA regarding the public consultation procedure for the new EIA permits
2. Declarations of the Energy Complex Oltenia regarding the fact that the forests object of the court cases have already been destroyed (Panduru online news article)
3. Court Cases Table

The decisions of the court will be submitted later, after they will be translated.

The communicant,