



Transboundary Access to Justice for Environmental NGOs

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International legislation

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991, enforced in 1997); ratified by Romania through Law no 22/2001

- SEA Protocol (2003, enforced in 2010), signed in 2003 by Romania
- First amendment to Espoo Convention, 2001, ratified by Romania through Law no 293/2006
- Second amendment was not ratified yet

International legislation

Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 1992 enforced in 2000), ratified by Romania Through Law no. 92/2003

- Annex I was published through order of MoE no 811/2010
- Protocol on Civil Liability adopted in 2003, not yet enforced – signed by Romania in 2003, not yet ratified

International legislation

Aarhus Convention ratified by Romania through Law no. 86/2000 and Governmental Ordinance no 878/2005; The last one also transposed the Directive no. 2003/4/CE – Aarhus Directive; Governmental Decision no 564/2006 regarding implementation of art 7 of Aarhus Convention

- Amendment to the Convention regarding the genetically modified organisms, Alma Ata 2005, ratified through Law 24/2008
- Protocol on Pollutant Release and Transfer Registers, Kiev 2003, enforced since 2009, ratified by Romania through Law no 112/2009

EU legislation

EIA Directive 85/337/EC amended by

- Council Directive 97/11/EC
- Directive 2003/35/EC of the European Parliament and of the Council
- Directive 2009/31/EC of the European Parliament and of the Council

Transposed by Romania through Governmental Ordinance 445/2009; Order 1284/2010; Governmental Decision no 564/2006;

International legislation

SEA Directive 2001/42/EC

- Transposed by Romania, Governmental Decision no 1076/2004

Seveso II Directive 96/82/EC

- Amended by Directive 2003/105/EC
- Commission Decision 2009/10/EC

Transposed by: Governmental Ordinance no 804/2007, and 79/2009; Order of MoE no 647/2005

Romanian Constitution

Art. 20 of Romanian Constitution stipulates that the international human rights treaties are applied with priority over national legislation – if there is any contradiction between national legislation and international human rights treaties, the provision of the treaty would prevail.

If the national legislation contains favorable regulations compared to the international treaties, then the national legislation prevails

- Art. 35 of Constitution regulates the right to a healthy environment as fundamental right
- Art.31 – access to information

Emergency Governmental Ordinance 195/2005

Access to justice is regulated in art 5 – the state recognizes to *any person* the right to a healthy and balanced environment and guarantees:

- a. access to information regarding the environment, respecting the confidentiality conditions provided by law
- b. freedom of association for environmental protection
- c. the right to be consulted in decision making process regarding the development of the policies, environmental legislation, issuing permitting acts, developing plans and program
- d. the right of addressing directly or through environmental organizations, the public institutions or the courts of justice, *without proving a substantive prejudice*
- e. the right to damages for the prejudice

- Rights of interested and affected public from neighboring countries are the same as for Romanian citizens: access to information, the right to be consulted, access to justice, freedom of association
- public from one country could have as objective to deal with environmental problems of other countries
- the public has standing in administrative procedures and in front of the courts of justice
- no prejudice has to be proved, except when asking for damages

Access to information procedure under FOIA *common procedure for any public information

- Under FOIA - 5 days for denying access to information, 10 days for sending the information, with the possibility of extending to 30 days for complex information
- Any person has standing – actio popularis
- FOIA establishes the legal presumption that all information managed by public authorities, national societies, commercial companies is unique or major shareholder, or is under the authority of a public authority, is public information
- Definition includes all environmental information
- The authority must prove that the information is included in exemptions prescribed by law

Consultation procedure

- More or less the same procedure as any EU member for EIA and SEA
- For other decisions with heavy impact regarding the environment – no public consultation procedure, defying Aarhus – ex. nuclear filed that has special law no 111/1996

Access to justice

- Most of the cases fall under Administrative Litigation Law no 554/2004 – cases are going to administrative courts:
 - grants legal standing in court for social organisms *NGOs, that have as object of activity protection of the rights of different categories of citizens and also the good functioning of public administration services;
 - a prejudiced person can be a social organism that invokes the violation *by the administrative act/omission etc, of a legitimate public interest
 - Legitimate public interest = related to rule of law, constitutional democracy, guaranteeing the fundamental rights, liberties and duties of the citizens, complying with community's needs, realizing the competence of public authorities
- OUG 1952005 provisions regarding standing in court must be respected in administrative courts– special law **specialia generalibus derogant*

National cases

The Energy Strategy of Romania for 2007 – 2020 – HG 1068/2007

- Greenpeace represented by Center for Legal Resources requested the Energetic Strategy from Ministry Of Economy to be evaluated according SEA
- To provide official English translation given the fact that this Strategy was very important due to Nuclear plant future plans
- The Ministry refused both requests and passed the Strategy without SEA
- In 2010 after several complaints by Greenpeace and CRJ, MoE claims they are running SEA procedure now

National Cases

- Access to information case in court was lost, the court totally disregarding the international transposed legislation. The court even mentioned art. 4 from Aarhus, claiming that the article does not prescribe such obligation of translating the information in other languages
- We are starting a case in court to annulment of the Governmental decision and maybe a case for infringement to European Commission

Classified information

Law no 182/2002, Governmental Decision 585/2002

- State Secret – established by Government according to a procedure prescribed by law
- Secret of Service – established *by any chief of any legal person*
- *No fair declassification procedure*
- *Act of classification is itself classified*
- *Motive and time of classification also classified*

Nuclear cases in Romania

- Building Reactor 3 and 4 at Cernavoda NPP brought along other 2 problems
 - The nuclear fuel – Mioveni Case – to double the capacity of the nuclear fuel factory
 - Place to deposit nuclear fuel – Saligny case to build a nuclear waste deposit Bulgaria notified Romania regarding similar project at Kozlodui
- Both cases have possible transboundary impact
- Building a new NPP in Romania – study regarding the location of future NPP classified as secret of service

Saligny case

- The National Commission for Nuclear Activities Control gave *partial authorization* to The Nuclear and Radioactive Waste Agency
- This means: prepare the documentation for the future nuclear waste deposit, including: establishing the location, buying the land, finalizing the plans for building the future deposit
- *Public consultation are not provided by special law 111/1996 regarding nuclear activities*
- Court cases on going – injunctive relief and annulment of partial agreement, possible infringement case at EC

New NPP case

- Information picked up from media by Greenpeace Romania from various declarations of Minister of Economy;
- Requests of information – at the beginning the Ministry did not answer. After winning in court, they answered in one of the cases that they are conducting a study regarding the location of the future NPP, paying from public money, but that the study is classified as secret of service; they declassified only a list of possible 102 locations;
- Several cases on access to information in court;
- Complaint to ACCC;

Baia Mare Cyanide Spill

- Very dangerous accident that occurred in Romania in 2000
- A wave of cyanide and heavy metals spilled from a gold processing plant in Romania and moved quickly from one river to the next, through Romania, Hungary, Serbia, and Bulgaria, killing tens of thousands of fish and other wildlife and poisoning drinking water
- No public information released for the public about the faith of the remaining industry from Baia Mare;
- between 2007 and 2010 new building permits were issued for foreign company for building pipelines from processing factory to the tailing pond and further to purification plant.
- MoE refused to answer to requests of information – we sued in spring. The first hearing set is next year

Rosia Montana case

- Procedure regarding public consultation including public from other states, more or less respected
- Less means that EIA contains many errors and false information, public debates were populated with people paid by the private company that occupied a lot of space of the real public to speak. Public debates lasted until 4, 5 o'clock in the morning
- EIA was suspended until summer for lack of documentation;
- Given the history of toxic lakes in this region, an accident in such project would be 20 times bigger than Baia Mare or recent accident in Hungary – cyanide lake - 300 ha

Access to justice

- The judges have poor experience and knowledge about environmental law in general, and especially about Aarhus Convention.
- Regarding public participation, there is hardly jurisprudence on this issue. Recent courts decision stated that public consultation is optional
- Injunctive relief is provided by law, but next to impossible to obtain – must prove immediate direct prejudice *until now provisions of OUG 1952005 were disregarded when injunctive relief was discussed

Access to justice

- Courts Decisions are not applied by authorities. We sued the Maier when he refused to communicate the land use plans and the construction permit in Basarab Case. We won but he simply refused to execute the decision of the court. We obtained them after we asked the court to cancel the construction permit and the land use plans.
- Judicial proceedings could be extremely long - we have one case still going on since 2006, regards building a huge bridge in Bucharest – almost finished; injunctive relief in Saligny case in the first court since June
- Judicial proceedings could become very expensive. Must pay lawyer's fee, and if you lose, also the expenses of the other parties. Judiciary expertise if needed can be very expensive also