

On July 21st Canadian Gabriel Resources filed a request for arbitration against Romania at the ICSID (the World Bank's International Centre for Settlement of Investment Disputes). The move marks a turning point in a long hard-fought struggle to save Roșia Montană from being turned into Europe's largest open-pit gold mine.

But let's start at the beginning: In 1997 Gabriel Resources (TSX:GBU) arrived at Roșia Montană, located in Romania's Carpathian Mountains. Its intention was to develop Europe's largest gold and silver mine. In order to proceed, two pretty valleys should have been sacrificed and its roughly 2.000 inhabitants to be resettled. Gabriel Resources ('Gabriel') hoped to reap about eight billion US Dollars in profit. For the locals this entailed a couple of hundreds of jobs in return for their resettlement and the destruction of an exceptional cultural heritage and the environment caused by developing the mine and by using tons of toxic cyanide to get hold of the gold.

The junior miner swiftly obtained its concession from the government and a few years on, started with resettlement and demolition works. However, its plans were immediately crossed by formidable and stubborn local opposition which over a time span of 15 years grew into the country's largest civil society movement. A peak in the protests against the mine was reached in the fall of 2013, when, over the course of several weeks, each Sunday 30.000 people took the streets in main Romanian cities and beyond. Furthermore rallies were held in the country's capital Bucharest every night.

To permit the mine, parliament needed to pass an exclusive law; above the law. Right before the vote in November 2013, Gabriel's CEO, Jonathan Henry, threatened with an investor-state-dispute settlement (ISDS) should the law not pass. During an interview Henry mentioned that compensation claims could be as high as four billion US Dollars. That sum roughly corresponds to two percent of Romania's GDP or its annual budget for education. Henry's intimidation attempts had the opposite effect: they fuelled public opinion against the mine and people took to the streets. Faced by such massive protests parliament was unable to pass the law and turned it down. The goldmine was averted for the time being.

In early 2015 the company took the next step. It officially notified the Romanian government about its intention to start with arbitration if their mine wasn't approved. There followed a six month long period during which the case could have been settled amicably. With this cooling period now having elapsed Gabriel's announcement of last week comes in response to the government's silence over the notification.

At the time of writing it is still unclear which bilateral investment protection agreement (BIT) will be chosen by Gabriel to base its arbitration case on. The BIT between Canada and Romania would be the obvious choice, of course, but it could also be the treaty between

When protecting the environment gets expensive: Romania sued by mining company in new ISDS case

Romania and the Netherlands, where Gabriel is also registered. The mining company will closely assess both BITs and chose the one more favorable for them. There is also no information available yet about the clause that will be invoked. The „Fair and Equitable Treatment“-clause (FET) might be an option. It permits investors an extensive interpretation about what is “fair and equitable”. Big companies therefore like to rely on it and are very successful with this: 75% of cases won by US-companies were based on the FET-clause. Gabriel will be represented by White & Case, a global law firm. It is a powerful player in the ISDS-business; representing 39 ISDS-cases during 2014 alone. It secured one of the highest compensation payments ever in a case defending a Canadian gold mining company against Venezuela. This makes the perspective for Romania against Gabriel look pretty grim. However, there are already two lessons that can be learned from the Roșia Montană case: It highlights the importance to terminate old BITs and to avoid new contracts that include ISDS! The treaty between the EU and Canada – CETA which is expected to pass in 2016 – includes a highly dangerous ISDS-chapter. An analysis showed an immensely increased danger for European countries to be sued by Canadian investors in the mining, oil and gas sector. Insiders are already celebrating CETA as a “ground breaking” deal with “far reaching impacts for mining companies.”

And: Pressure from civil society is working! Romania’s citizens showed us that their brave protest against all odds were able to prevent the destruction of Roșia Montană. A strong and determined European movement can also stop CETA and TTIP!

source: stop-ttip.org