

---

---

INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES

**GABRIEL RESOURCES LTD.  
AND GABRIEL RESOURCES (JERSEY) LTD.**

*Claimants*

v.

**ROMANIA**

*Respondent*

ICSID CASE No. ARB/15/31

---

**CLAIMANTS' OBSERVATIONS ON NEW EVIDENCE**

---

October 29, 2021

**Țuca Zbârcea & Asociații**

**WHITE & CASE<sup>LLP</sup>**

*Counsel for Claimants*

---

---

# CLAIMANTS' OBSERVATIONS ON NEW EVIDENCE

## TABLE OF CONTENTS

|   | Page      |
|---|-----------|
| <b>I. INTRODUCTION .....</b>  | <b>1</b>  |
| <b>II. ROMANIA'S REACTIVATION OF ITS UNESCO APPLICATION AND<br/>UNESCO'S INSCRIPTION OF THE ROȘIA MONTANĂ MINING LANDSCAPE<br/>AS A UNESCO WORLD HERITAGE SITE .....</b>  | <b>3</b>  |
| A. Romania Had Submitted Its UNESCO Application but then Postponed<br>Consideration of It Pending Completion of this Arbitration.....   | 3         |
| B. The Newly Submitted Evidence Reveals that Romania Resumed the Procedure<br>Immediately after the 2019 Hearing and UNESCO Inscribed the Roșia Montană<br>Mining Landscape as a UNESCO World Heritage Site ..... | 10        |
| C. The Relevance of these Developments to the Claims before the Tribunal .....  | 12        |
| D. Respondent's Jurisdictional Objection Lacks Merit .....  | 19        |
| <b>III. ISSUANCE OF COURT DECISION REJECTING THE LEGAL CHALLENGE<br/>TO THE SECOND CÂRNIC ADC .....</b>   | <b>20</b> |

## I. INTRODUCTION

1. In accordance with Procedural Order No. 35 and the procedure agreed between the Parties, on October 5, 2021, Claimants submitted several new documents, Exhibits C-2982 through C-2990. The Exhibits relate to:

- a) Romania's reactivation on January 31, 2020 of its nomination of the Roşia Montană Mining Landscape as a UNESCO World Heritage site resulting in UNESCO's inscription of the site on July 27, 2021 onto the World Heritage List and simultaneously onto the List of World Heritage in Danger; and
- b) Romania's Buzău Tribunal's decision on December 10, 2020 rejecting the legal challenge to the second Cârnic archaeological discharge certificate ("ADC"), which the court communicated on May 27, 2021 to the parties to that proceeding, attesting that the decision is final and irrevocable.

The relevance of these new exhibits is explained below.

2. In short, the evidence already presented to the Tribunal shows that the Romanian Government politicized and arbitrarily held up the permitting process for the Roşia Montană Project beginning in August 2011 and by September 9, 2013 terminated the Roşia Montană Project and the State's joint venture with RMGC. Although there was not a formal legal act effecting the termination, senior members of the Government stated plainly this was what they were doing, even while acknowledging that the Project had satisfied the legal requirements for the environmental permit. In doing so, the Government breached several articles of both BITs causing Gabriel to incur tremendous loss.

3. The Government's decision to terminate the State's joint venture with Gabriel and the Roşia Montană Project was *not* taken to promote cultural heritage in the area. The Roşia Montană Project as developed would have preserved the most significant cultural heritage assets in the area, including *in situ*, and would have included investment of more than US\$70 million in culture heritage preservation and restoration in the area of the Project and a further US\$70

million nationally.<sup>1</sup> Based on the findings resulting from an expansive, multi-year research program that brought together more than 40 expert Romanian institutions and over 400 individual specialists, organized by the State's own culture authorities and supervised by the Ministry of Culture, the Government made fully-informed and fully-considered policy decisions concerning the preservation of cultural heritage in balance with the State's policy of promoting mining.<sup>2</sup> Those decisions were reflected in the ADCs issued by the Ministry of Culture covering all of the Project-impacted area with the exception of Orlea,<sup>3</sup> in the Ministry of Culture's repeated endorsements both of urbanism plans for the Project area<sup>4</sup> and of the environmental permit,<sup>5</sup> as well as in the Government's considered decision, on several occasions, to reject proposals to seek UNESCO World Heritage status for the area.<sup>6</sup>

4. The Government terminated the Roșia Montană Project and the State's joint venture with RMGC because the Government prioritized the political preferences of those in office over what the law required, leading ultimately to the Government's insistence on the misconceived Special Law. The Special law was intended to allow those in Government who had been on record as opposing the Project to avoid responsibility for issuing the environmental permit. When the Special Law, perceived as a corrupt and illegitimate act, brought masses of anti-Government protestors to the streets, the Government ordered the political rejection of the Special Law in Parliament and with it the Roșia Montană Project and the State's joint venture with RMGC.

5. Subsequent events further confirmed that the Roșia Montană Project and the State's joint venture with RMGC were terminated. Those later events included the Government's decision to seek a UNESCO listing for Roșia Montană. While the Government

---

<sup>1</sup> Gligor ¶¶ 103-104.

<sup>2</sup> *See, e.g.*, Gligor ¶¶ 25-41.

<sup>3</sup> Gligor ¶ 39, nn. 55, 160; Claimants' Opening (2019) vol. 2:53. *See also generally id.* vol. 2:39-62. Orlea was not to be mined until year 7 or year 8 of operations and therefore preventive research and a decision as to its archaeological discharge were to take place in due course without delaying permitting or Project development. Claimants' PHB ¶¶ 117-126, 372-378.

<sup>4</sup> Claimants' PO27 ¶ 218(c), nn. 515-516; Podaru ¶ 261, n. 417.

<sup>5</sup> Claimants' PHB ¶¶ 72-75.

<sup>6</sup> *See* Memorial ¶¶ 309-314, 599-601. *See also infra* ¶ 8.

for a time postponed the UNESCO process in light of its defense in this arbitration, the new evidence shows that the Government resumed the process leading to UNESCO's inscription.

6. That development does not alter Gabriel's claims in this arbitration, which remain as set forth in Claimants' earlier pleadings. The evidence of the resumption of the UNESCO process followed by its inscription, however, demonstrates unequivocally that Gabriel's investments were taken consistent with the political repudiation announced in September 2013. It is undeniable in light of these latest events that the Government's complete frustration and repudiation of Gabriel's investments in RMGC in September 2013, following the political decision-making process begun in August 2011, *de facto* expropriated Gabriel's investments unlawfully and also breached Romania's obligation, *inter alia*, to accord fair and equitable treatment to Gabriel's investments. But for those earlier treaty breaches that already destroyed Gabriel's investments, the Government's decision to inscribe the entire Roșia Montană mining landscape as a UNESCO World Heritage site where no mining can take place, without due process and compensation to Gabriel, would constitute breaches of the same treaty provisions for the reasons discussed below and set forth extensively in prior submissions.

## **II. ROMANIA'S REACTIVATION OF ITS UNESCO APPLICATION AND UNESCO'S INSCRIPTION OF THE ROȘIA MONTANĂ MINING LANDSCAPE AS A UNESCO WORLD HERITAGE SITE**

### **A. Romania Had Submitted Its UNESCO Application but then Postponed Consideration of It Pending Completion of this Arbitration**

7. Claimants previously addressed Romania's application to list the Roșia Montană Mining Landscape as a UNESCO World Heritage site.<sup>7</sup> The application was significant because it was an affirmative act of the State undeniably rejecting the Roșia Montană Project with legal effect. As Claimants demonstrated in their prior pleadings, Romania's UNESCO application was a further manifestation of the State's earlier political repudiation and *de facto* expropriation of Gabriel's investment.<sup>8</sup>

---

<sup>7</sup> *E.g.*, Memorial ¶¶ 599-613; Reply § V.B.6-7; Claimants' Opening (2019) vol. 7:26-39.

<sup>8</sup> *E.g.*, Claimants' PO27 ¶¶ 213-218, 221-222.

8. Also as earlier demonstrated, Gabriel and RMGC had acquired a legitimate expectation upon which they reasonably relied while continuing to invest to advance Project development that the Government would not prohibit mining in Roșia Montană altogether in favor of cultural heritage protection generally or a UNESCO listing specifically.<sup>9</sup> Recognizing the archaeological interest in the area, as required by law, Gabriel and RMGC invested significantly in the research that enabled the Ministry of Culture and the Romanian Government to make an informed decision about the policy the Government would adopt for the area. For example,

- as required by law, RMGC funded and supported extensive archaeological research and historical study of the Project area that led the Ministry of Culture to issue ADCs covering the entire Project area except Orlea;<sup>10</sup>
- the Ministry of Culture issued the 2004 List of Historical Monuments (“LHM”) also reflecting the results of that research;<sup>11</sup>
- the State’s research included meetings in 2004 with UNESCO representatives and consideration of a UNESCO listing, which the Government did not then pursue;<sup>12</sup>
- the Ministry of Culture in 2010 endorsed the SEA Endorsement for the Project area;<sup>13</sup>

---

<sup>9</sup> Claimants’ PO27 ¶ 218.

<sup>10</sup> Memorial ¶¶ 156-160; Reply ¶¶ 237-243; Schiau §§ III.C-III.D; Schiau II ¶¶ 68(e), 224.

<sup>11</sup> Memorial ¶¶ 156-160; Reply ¶¶ 237-243; Schiau §§ III.C-III.D; Schiau II ¶¶ 68(e), 224.

<sup>12</sup> See NHMR Report on Alburnus Maior Research Program, Oct. 2006 (C-1375) at 46-47 (describing September 2004 visit by UNESCO representatives to the site and meetings with the Ministry of Culture supervised Alburnus Maior research team). See also Parliamentary Assembly of the Council of Europe Report, Dec. 2004 (C-681) at 16-17 (noting the many meetings held by the PACE team and in response to questions on the subject noted that UNESCO might be considered as an option depending on the results of research). See also Gligor ¶¶ 46-49, 66.

<sup>13</sup> Podaru ¶ 261; Letter No. 395 of Alba County Culture Department to Sibiu Regional EPA dated Apr. 19, 2010 (C-1901).

- the Ministry of Culture prepared favorable endorsements for the urbanism plans for the Project area (PUZs) demonstrating the Ministry's acceptance that the Project area would be zoned for mining;<sup>14</sup>
- following the annulment of the first Cârnic ADC, the Ministry of Culture in July 2011 issued a second ADC for Cârnic based on an updated report of the research in the area;<sup>15</sup>
- in light of proposals made at that time in support of a UNESCO listing,<sup>16</sup> in an interview given in July 2011, Minister of Culture Kelemen Hunor discussed the rigorous approval process for issuance of the second Cârnic ADC, referred to RMGC's agreement to invest US\$140 million in cultural heritage as a victory for the State, and, regarding UNESCO, stated, "I would have liked the inclusion on UNESCO to be a real solution. Unfortunately, it is not."<sup>17</sup>
- the Ministry of Culture endorsed issuance of the Environmental Permit for the Project in both 2011 and 2013;<sup>18</sup>
- the Parliament's Permanent UNESCO Commission considered proposals to seek UNESCO World Heritage status for Roșia Montană again in August 2013 and again decided unanimously not to do so;<sup>19</sup> and

---

<sup>14</sup> Claimants' PO27 ¶ 218(c), nn. 515-516 (noting that the approval of the 2002 PUGs and PUZ included favorable endorsements of the Ministry of Culture); Claimants' PHB ¶¶ 98, 112, 115 (explaining that the Ministry of Culture prepared draft endorsements of the amended 2006 PUZ in 2013 that were held up pending Parliament's vote on the Special Law); Podaru n. 417. *See also* Ministry of Culture Draft Endorsement: Protected Area PUZ (C-2578) at 3; Ministry of Culture Draft Endorsement: Industrial Area PUZ (C-2579) at 3.

<sup>15</sup> Claimants' PO27 ¶ 218(d), nn. 517-518; Archaeological Discharge Certificate No. 9/2011 (C-680).

<sup>16</sup> *See* Report of Independent Group for Monitoring Cultural Heritage at Roșia Montană, 2011, (C-587) (pros and cons of UNESCO proposal discussed throughout). *See also* Gligor ¶ 82.

<sup>17</sup> Interview of Minister Kelemen Hunor, July 28, 2011 (C-893) at 1, 4. *See also* Gligor ¶¶ 103-104 (quoting further statements of Minister Kelemen Hunor made at that time).

<sup>18</sup> Claimants' PHB ¶¶ 72-75 (discussing C-446 and C-655).

<sup>19</sup> Memorial ¶¶ 599-601.

- Minister of Culture Daniel Barbu publicly stated in 2013 that the Project should be implemented because it would preserve, not destroy, cultural heritage in the area.<sup>20</sup>

9. Only after the political repudiation of the Roșia Montană Project and the State’s joint venture with Gabriel did Romania reverse course and issue the 2015 LHM and prepare and submit the corresponding application to UNESCO.<sup>21</sup>

10. Romania submitted its initial UNESCO application, which had the effect of adding the site to Romania’s UNESCO “Tentative List,” on February 18, 2016.<sup>22</sup> Romania submitted the documentation supporting its application on January 4, 2017.<sup>23</sup> The subject of Romania’s application included the historical monument of Alburnus Maior - Roșia Montană as listed on the 2015 LHM, which covered the entire Project footprint.<sup>24</sup>

11. As summarized on UNESCO’s website, Romania’s application stated that “the cultural landscape is threatened by irreversible changes following the ending of traditional mining operations ... and the proposed resumption of open cast mining with modern quarrying techniques would inevitably entail the quasi-total and irreversible destruction of the cultural

---

<sup>20</sup> Claimants’ Opening (2019) vol. 6:30-31, 37-38 (quoting statements of Minister of Culture Barbu on September 13 and September 23, 2013 in C-1511 and C-557, respectively).

<sup>21</sup> The 2010 LHM when issued required updating following the issuance of the second Cârnic ADC in July 2011. The Ministry of Culture thereafter also repeatedly acknowledged that the 2010 LHM contained other material errors that also needed to be corrected. Gligor ¶¶ 156-160; Claimants’ PHB ¶¶ 113, 198, nn. 242, 409. In February 2016, the Ministry of Culture published the 2015 LHM without correcting the acknowledged errors in the 2010 LHM. Instead, it listed the “Archaeological Site Alburnus Maior - Roșia Montană” as an historical monument, thus defining an archaeological site as an historical monument without basis and contrary to the law, including because the listed monument consisted of areas that the Ministry of Culture earlier had archeologically discharged. Schiau II ¶¶ 54-56.

<sup>22</sup> Memorial ¶¶ 603-604. See also Jennings ¶¶ 136-137; Claimants’ PO27 ¶ 214.

<sup>23</sup> Memorial ¶ 609; Gligor II ¶¶ 110-116; Nomination for Inclusion in the World Heritage List, *Roșia Montană Mining Landscape* (C-1892).

<sup>24</sup> UNESCO Nomination Document (C-1892) at 9-10; Gligor II ¶ 110; Claimants’ Opening (2019) vol.7:32. See also Ministry of Culture Letter to Roșia Montană Municipality, Nov. 25, 2016 (C-2517) (noting with regard to urbanism plans that the borders of the Roșia Montană historical monument referred to as the Alburnus Maior archaeological site were under preparation as part of the nomination file for UNESCO); Ministry of Culture Letter to Roșia Montană Municipality, Dec. 28 2016 (C-2370) (enclosing with reference to urbanism plans the delineated boundaries of the “Alburnus Maior Archaeological Site - Roșia Montană (a historical monument included on the 2015 List of Historical Monuments)”).



heritage and its setting....”<sup>25</sup> Thus, Romania’s application to UNESCO was fundamentally at odds with the Project that was designed to resume open pit mining at Roșia Montană in accordance with the License issued to RMGC and the ADCs earlier issued by the Ministry of Culture.<sup>26</sup>

12. It is not disputed that as a matter of Romanian law cultural heritage assets are protected with priority and may result in a general prohibition of industrial activities such as mining, including as must be reflected in urbanism plans.<sup>27</sup> Thus, as Professor Podaru explains, while urbanism plans must be amended to accommodate mining licenses, urbanism plans must account for historical monuments in priority over mining, and no construction work can be carried out in the area of an historical monument without an endorsement from the competent Culture authorities.<sup>28</sup> Construction of any part of a mine cannot begin without a construction permit, which in turn can only be issued in accordance with the urbanism plan for the respective area.<sup>29</sup>

13. It also is not disputed that Romania’s UNESCO application itself triggered special protections under Romanian law, which given the nature of the subject of the then-proposed UNESCO site, prohibited any mining in the area.<sup>30</sup> Article 15 of GO 47/2000 specifically addresses historical monuments that Romania has submitted to UNESCO for inscription. It provides:

The special protection measures for the historical monuments included on the World Heritage List also apply to the historical monuments for which

---

<sup>25</sup> Memorial ¶ 604; Screenshot of UNESCO website (C-1275) at 4.

<sup>26</sup> Memorial ¶¶ 604-613.

<sup>27</sup> Bîrsan II ¶¶ 82-86; Schiau ¶¶ 12-17 (mining is prohibited on archaeological sites or in the area of an historical monument).

<sup>28</sup> Podaru § III. *See also* Ministry of Culture Letter to Roșia Montană Municipality, Nov. 25, 2016 (C-2517) (directing that under law protection of the historical monument at Roșia Montană “prevails over the mining activities” and must be reflected accordingly in the urbanism plans for the area).

<sup>29</sup> Podaru §§ III, IV.

<sup>30</sup> GO no. 47/2000 (C-2350); Podaru ¶ 347. *See generally* Podaru ¶¶ 345-358; Claimants’ Opening (2019) vol. 7:35.

Romania has submitted to the UNESCO World Heritage Committee the file for their inclusion on the World Heritage List.<sup>31</sup>

Thus, Romania's submission of an application to UNESCO for an historical monument subjects that monument by law to special protections that are in addition to the protections otherwise applicable to the historical monument. That is in line with Romania's undertakings as a party to the UNESCO Convention, as an application places the subject site onto the State's "Tentative List," and confirms the State's decision that the site merits inscription and thus conservation and protection.<sup>32</sup>

14. In this case, the indisputable effect of the UNESCO application was that it gave rise to a further layer of protection to the subject historical monument, in accord with a legally-required program for protection and management of the site to be incorporated into the urbanism plan for the area, that is fundamentally incompatible with RMGC's mining license, with the ADCs issued (and re-issued in the case of Cârnic) by the Ministry of Culture, and with the entire Roşia Montană Project.<sup>33</sup>

15. Recognizing that the UNESCO application put the lie to Respondent's false arbitration narrative that the State never repudiated the Project and that Romanian permitting authorities have been at all times since the rejection of the Special Law ready, willing, and able to act on permit applications from RMGC if and when the Project met applicable standards, in June 2018 the Government formally requested that the World Heritage Committee defer consideration of its application, notably, however, without withdrawing the application.<sup>34</sup>

---

<sup>31</sup> GO no. 47/2000 (C-2350), Art. 15.

<sup>32</sup> See Jennings ¶¶ 136-137; Jennings II ¶ 76.

<sup>33</sup> GO no. 47/2000 (C-2350), art. 7; Podaru ¶¶ 347-348, 357; UNESCO Nomination Document (C-1892) at 90 ("According to the law, once a nomination is submitted, all provisions in place for World Heritage sites will apply to the respective property as well. These include the management system designed to protect all World Heritage properties in Romania. Roşia Montană will benefit from these provisions with the submission of the nomination file to UNESCO."); *id.* at 114, 130 (confirming that per Law no. 564/2001, once a nomination is submitted, all provisions for World Heritage property protections apply and that "[a]ll measures set forth by the law in respect to protected areas are compulsory for all public authorities"). See also Memorial ¶¶ 604-610; Reply ¶¶ 282-284.

<sup>34</sup> Letter from Permanent Delegation of Romania to UNESCO, June 28, 2018 (C-1918) (requesting "in order to protect the economic rights of the Romanian State" the World Heritage Committee to refer the application to Romania); Ministry of Culture press release, June 28, 2018 (C-1917); Reply ¶¶ 280-281; Gligor II ¶¶ 118-122.

16. The World Heritage Committee granted the request, acknowledging Romania's "official request ... due to the ongoing international arbitration," as follows:

In compliance with paragraph 159 of the *Operational Guidelines*, refers the nomination of **Roșia Montană Mining Landscape, Romania**, back to the State Party, due to the ongoing international arbitration, and to implement the measures required to ensure the protection and management of the potential OUV [outstanding universal value] of the property as identified by ICOMOS and encourages the State party to work in close cooperation with the Advisory Bodies to this end.<sup>35</sup>

17. Respondent argued<sup>36</sup> that the effect of the World Heritage Committee's decision under paragraph 159 of its Operational Guidelines<sup>37</sup> was that "the file is no longer 'submitted to the UNESCO World Heritage Committee,'" and that the special protection measures for historical monuments in Article 15 of GO 47/2000 did not apply for that reason. Respondent's argument, however, had no merit because Romania had submitted the file and did not withdraw it, as was an option under paragraph 152 of its Operational Guidelines.<sup>38</sup> The fact that the World Heritage Committee agreed to refer the file back to Romania for additional information in accordance with paragraph 159 of UNESCO's Operational Guidelines did not detract from the fact that Romania's application remained before UNESCO, even if not ripe for decision. Indeed, the *Roșia Montană Mining Landscape* remained on Romania's Tentative List,<sup>39</sup> and so Romania was obligated to ensure its protection accordingly, as UNESCO's decision itself (quoted above) makes clear.<sup>40</sup>

18. Thus, while at that time it remained uncertain whether and if so when Romania's *Roșia Montană Mining Landscape* would be inscribed as a UNESCO World Heritage site,

---

<sup>35</sup> World Heritage Committee, Decisions adopted by the 42<sup>nd</sup> Session, Jul. 4, 2018 (C-1920) at 5-6 (emphasis in original). See also Ivașcu on *Roșia Montană*, Jul. 5, 2018 (C-1921); Reply ¶ 280; Gligor II ¶¶ 123-124.

<sup>36</sup> Rejoinder ¶ 711; Tr. (Dec.3, 2019) 557:6-558:7 (Respondent's Opening).

<sup>37</sup> Operational Guidelines for the Implementation of the World Heritage Convention (C-707).

<sup>38</sup> *Id.* ¶ 152 (re Withdrawal of Nominations). See also Ministry of Culture press release, June 28, 2018 (C-1917) (quoting Minister of Culture Ivașcu stating "the Government of Romania DOES NOT REQUEST the file WITHDRAWAL but its POSTPONEMENT until the settlement of the litigation in the arbitration file no. ARB/15/31") (emphasis in original).

<sup>39</sup> Memorial ¶ 604; Reply ¶¶ 277, 281; Romania's World Heritage Tentative List (C-2707).

<sup>40</sup> See also Jennings II ¶ 76-77; World Heritage Committee Decisions (C-1920) at 5-6.

Romania had clearly reaffirmed its earlier definitive repudiation of Gabriel's investments and with the UNESCO application had given it further legal effect.

**B. The Newly Submitted Evidence Reveals that Romania Resumed the Procedure Immediately after the 2019 Hearing and UNESCO Inscribed the Roșia Montană Mining Landscape as a UNESCO World Heritage Site**

19. One month after the 2019 hearing, on January 31, 2020, the Ministry of Culture issued a press release quoting Minister of Culture Bogdan Gheorghiu announcing that “with close communication and consultation with the Romanian Prime Minister, Mr. Ludovic Orban,” Romania gave notice to UNESCO that it decided “to resume the procedure” to list Roșia Montană as a UNESCO World Heritage Site.<sup>41</sup> The Ministry of Culture further confirmed this in a press release on February 5, 2020 that described steps taken to implement urbanism plans in the area of Roșia Montană to protect the historical monuments and to complete classification procedures for additional buildings and structures.<sup>42</sup> The February 5 press release quoted Minister of Culture Gheorghiu stating that “[t]he preservation of the Roșia Montană heritage is a pressing necessity, not just an intangible concept that will wait for resolution in international forums.”<sup>43</sup> Thus, the Government ensured that a vote on the “Roșia Montană Mining Landscape” would in due course be included on the agenda of the UNESCO World Heritage Committee’s July 2021 meeting.

20. Speaking during a radio interview in advance of that meeting about the pending UNESCO application, Minister Gheorghiu emphasized again that the decision to resume the procedure was taken together with the Prime Minister,<sup>44</sup> and with the understanding of the potential impact on this arbitration.<sup>45</sup> Minister Gheorghiu also noted that even prior to the

---

<sup>41</sup> Ministry of Culture Press Release, Jan. 31, 2020 (C-2982) (stating also that “the notice will be submitted today, thus observing the deadline required for the case to be discussed in this summer’s session of the World Heritage Committee, which will take place in China”).

<sup>42</sup> Ministry of Culture Press Release, Feb. 5, 2020 (C-2983).

<sup>43</sup> *Id.*

<sup>44</sup> Interview of Minister of Culture Bogdan Gheorghiu and others, Radio Guerilla, July 8, 2021 (subtitled video and transcript) (C-2986) at 1 (“I made this decision along with Prime Minister back then, Ludovic Orban, to resume the procedure for the inclusion of Roșia Montană in the UNESCO World Heritage.”).

<sup>45</sup> *Id.* at 2 (“But what I also asked during the Government meeting and the Prime Minister also asked is – well, the Ministry of Finance says that if we keep the file we pay five billion, if we withdraw we pay around one billion, because we’ll pay compensation either way, this is what the lawyers presumably say.”).

UNESCO application, the Government already had put in place legal protections (*i.e.*, the 2015 LHM) that prohibited mining,<sup>46</sup> and that Romania’s pending nomination file was for the entire area, not only certain Roman galleries.<sup>47</sup>

21. On July 27, 2021, as announced on UNESCO’s website, UNESCO added Romania’s “Roșia Montană Mining Landscape” to UNESCO’s World Heritage List and simultaneously inscribed it on the List of World Heritage in Danger “pending the removal of threats to its integrity posed by possible extractive activities.”<sup>48</sup> The UNESCO announcement also stated that “[t]he site was also inscribed on the List of World Heritage in Danger due to threats posed by plans to resume mining which would damage a major part of the inscribed Mining Landscape.”<sup>49</sup>

22. The Ministry of Culture also announced the news of the UNESCO inscription in a press release of the same date,<sup>50</sup> and Romania’s President,<sup>51</sup> Prime Minister,<sup>52</sup> and Deputy Prime Minister made statements that day celebrating the announcement.<sup>53</sup>

---

<sup>46</sup> *Id.* at 2 (“[I]t has to be part of the national heritage in order to be nominated for registration in the World Heritage. So, the inclusion or non-inclusion doesn’t change its legal regime at all.”).

<sup>47</sup> *Id.* at 7 (confirming that while “ICOMOS recommended the inclusion of Roman galleries in UNESCO,” “the entire area is in the UNESCO file, not only the Roman galleries”). Under the guidance of the expert mining archaeology team organized by the Ministry of Culture, RMGC excavated, restored, and conserved *in situ* for public access an extensive underground complex of the most significant and archaeologically rich Roman galleries in the area at Cătălina-Monulești. Gligor ¶ 57; Gligor Annex A Slides 30-53 (showing photos of RMGC’s restoration works to reopen and rehabilitate the Cătălina-Monulești galleries); Henisz ¶ 30 (describing his visit to the “impressive site” in December 2011).

<sup>48</sup> UNESCO’s July 27, 2021 announcement (C-2984) at 2-3.

<sup>49</sup> *Id.*

<sup>50</sup> Ministry of Culture Press Release, July 27, 2021 (C-2985).

<sup>51</sup> President Klaus Iohannis Facebook Post, July 27, 2021 (C-2987) (“I salute the inclusion of the mining cultural landscape of Roșia Montană in the patrimony of humanity! Through united efforts of the authorities and specialists, Roșia Montană must become a model of how to value patrimony through the sustainable development of the area.”).

<sup>52</sup> Interview of Prime Minister Florin Cîțu, Jurnalul de Seară, Digi24 TV, July 27, 2021 (C-2988) (Prime Minister Cîțu stating that “it’s a decision that I salute today and, something that’s very important,” and that “it is approved today.”).

<sup>53</sup> Deputy Prime Minister Dan Barna, Facebook Post, July 27, 2021 (C-2989) (announcing that “Roșia Montană was included today in the UNESCO World Heritage!”, and that the “heritage protection ... will highlight the Roman galleries and the mining landscape of the locality”).

### C. The Relevance of these Developments to the Claims before the Tribunal

23. As noted above, Romania's decision to resume the UNESCO procedure leading to the inscription of the Roșia Montană Mining Landscape as a UNESCO World Heritage site is the final legal nail in the coffin for Respondent's fabricated arbitration argument that the permitting process for the Roșia Montană Project remains open and pending and that the competent authorities are still considering RMGC's applications.<sup>54</sup>

24. Claimants have shown that although there was no formal legal act terminating the Roșia Montană Project or repudiating Gabriel's investment, the expropriation occurred *de facto* with the political repudiation of the Project and the State's joint venture with Gabriel in September 2013. It was confirmed and made clear by the "post-Parliament" events, including, among other things, designating the entirety of Roșia Montană as an historical monument in the 2015 LHM and submitting the corresponding application to list the Roșia Montană Mining Landscape as a UNESCO World Heritage site, as well as multiple definitive statements from various senior Government officials that the Project would not be done.<sup>55</sup>

25. In response, Respondent argued that the Ministry of Culture has not retracted its April 2013 endorsement of the environmental permit "irrespective of the list of historical monuments and the UNESCO application," and contended that if RMGC met the permitting requirements, the Ministry of Culture then would "address any request to declassify Roșia Montană."<sup>56</sup> This argument had no merit because, among other reasons, the evidence is overwhelming that RMGC met the permitting requirements and that the Ministry of Culture was obligated to institute procedures to declassify historical monuments in the area consistent with the ADCs it issued. This is because the Ministry of Culture's issuance of an ADC confirms that a site does not contain archaeological significance and may be used for industrial activities, including mining, and as such cannot lawfully be classified as an historical monument. It therefore is not possible for a site to have been archaeologically discharged and for it to remain

---

<sup>54</sup> See Claimants' PO27 ¶¶ 204-224; Claimants' PHB ¶¶ 235-236, 240, 250-251.

<sup>55</sup> Claimants' PHB ¶ 235.

<sup>56</sup> *E.g.*, Counter-Memorial ¶ 417.

an archaeological site classified as an historical monument.<sup>57</sup> Thus, at the time of issuing the second Cârnic ADC in July 2011, Minister of Culture Hunor stated publicly that the 2010 LHM would be updated to remove Cârnic.<sup>58</sup> In view of the Government's politicized approach to permitting adopted in August 2011, however, he stated unequivocally that nothing would be done to align the LHM with the ADCs until after the Government negotiated a new economic agreement with Gabriel and decided politically whether to move forward with the Project.<sup>59</sup>

26. The record further demonstrates that, after the political repudiation of Gabriel's investments, the Ministry of Culture issued the 2015 LHM listing the entirety of Roșia Montană as an historical monument with the expressed intention to block the mining project with legal effect and to prepare the UNESCO application.<sup>60</sup> This is evident from the Minister of Culture's first announcement of the 2015 LHM on his Facebook page tagging "Roșia Montană in UNESCO World Heritage," along with multiple related statements that this designation ensured the Project would not be done.<sup>61</sup>

27. Moreover, subsequent steps taken by the Government made clear that the 2015 LHM designation of Roșia Montană in its entirety as an historical monument was the initial step in preparing the UNESCO application. This is evident from the Ministry of Culture's correspondence to the Roșia Montană Municipality explaining that delineation of the borders of the historical monument in that LHM were being prepared as part of the UNESCO nomination file.<sup>62</sup> It is also clear from the delineation documentation thereafter also forwarded to the

---

<sup>57</sup> Memorial ¶ 158 (with references to the first expert legal opinion of Professor Schiau); Schiau II ¶¶ 54-56.

<sup>58</sup> Claimants' PHB ¶ 113; Claimants' Opening (2019) vol. 7:10 (Minister Hunor stating on July 14, 2011 that if the second Cârnic ADC was issued, as it was the next day, that it would be "followed, if that is the case, by the removal from the List of Historical Monuments of a part of Cârnic Massif").

<sup>59</sup> Claimants' PHB ¶ 113, 233; Claimants' Opening (2019) vol. 3:10-11 (Minister Hunor stating on August 24, 2011, "I have not signed the order yet because there are many aspects that need to be discussed. First of all, the level of participation of the Romanian State in that company, and I am not going further until this aspect is clarified, and the Minister of Environment cannot go further either; this must be decided at the government level. The Minister of Environment or the Minister of Culture are not the ones to start this Project."); *id.* vol. 3:12-13 (Minister Hunor stating the next day, "Until the contract and the participation of the Romanian state in the joint venture are renegotiated, we cannot take another step, no matter what the step.").

<sup>60</sup> Claimants' PO27 ¶¶ 213-214; Memorial ¶¶ 596-597. *See also* Claimants' PHB ¶ 200.

<sup>61</sup> *See* Claimants' Opening (2019) vol. 7:18-22.

<sup>62</sup> Ministry of Culture Letter to Roșia Montană Municipality, Nov. 25, 2016 (C-2517).

municipality.<sup>63</sup> That documentation states that it is a study prepared by the National Institute of Heritage, based on the extensive archaeological research done from 1999-2006, the results of which made it possible to determine the limits of the historical monument listed on the 2015 LHM as the “Archaeological Site Alburnus Maior - Roșia Montană” for the nomination of the Roșia Montană Mining Cultural Landscape for inclusion on the UNESCO World Heritage List.<sup>64</sup> Notably, no acknowledgement or mention is made that the extensive archaeological research done from 1999-2006 was funded by RMGC.<sup>65</sup> Also notable is that although the same extensive research had led the Ministry of Culture earlier to issue ADCs covering the entire Project area except Orlea (in total approximately 90% of the Project area),<sup>66</sup> NIH now stated:

In the studied area there are also certain archaeologically researched areas for which archaeological discharge certificates have been issued in the past (one of the certificates [the first Cârnic ADC] has been annulled in court). According to the law, the archaeological discharge certificate causes the area in question to be reinstated to normal human activities. The decision regarding the archaeological discharge has been taken from the strict and localized perspective of that area’s capacity to still yield artifacts, vestiges and information of an archaeological nature, but it did not take into account an integrating approach to the area, to the site, in which the archaeologically discharged areas – the necropolises for example – still have a great value for the ancient topography, which is preserved on a large area in the Archaeological Site Alburnus Maior – Roșia Montană. From the perspective of this approach to the site and considering that the archaeological discharges in question have not been followed by the declassification of the respective portions of the site, which maintained their status as historical monument, this documentation acknowledges that these areas belong entirely to the Archaeological Site Alburnus Maior -- Roșia Montană.<sup>67</sup>

28. Romania’s UNESCO Nomination Document further explains the significance of the historical monument delineation documentation to the urbanism plan for the Roșia Montană area as follows:

---

<sup>63</sup> Ministry of Culture Letter to Roșia Montană Municipality, Dec. 28 2016 (C-2370).

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *See id.*

<sup>66</sup> *E.g.*, Claimants’ Opening (2019) vol. 2:53. *See also generally id.* vol. 2:39-62.

<sup>67</sup> Ministry of Culture Letter to Roșia Montană Municipality, Dec. 28 2016 (C-2370) at 32 (citation to law in footnote omitted); Claimants’ Opening (2019) vol. 7:31.



The PUG objective is to ensure the desired state of conservation of the property while making the transition from industrial zoning, in support of open pit mining and processing, to that of heritage-lead [sic] zoning appropriate to a nominated World Heritage property.

The Ministry of Culture, through the National Institute of Heritage & The National Museum of Romanian History already ensured one of the essential documentations on which the PUG is to be initiated – **the study establishing the overall boundaries of the Alburnus Maior listed archaeological site**. The study was validated by the National Commission for Historic Monuments as well as the National Commission for Archaeology and is to be used also as one of the key scientific studies for the future conservation plan.<sup>68</sup>

29. All this leads to the conclusion that by the time the Ministry of Culture announced the issuance of the 2015 LHM, it was clear that the Ministry of Culture would not complete the process of declassification required by law following issuance of the ADCs.<sup>69</sup> Moreover, the Ministry of Culture’s position that it would not declassify historical monuments until the Ministry of Environment endorsed the environmental permit,<sup>70</sup> combined with Respondent’s (wrong) assertion that the urbanism plan had to be in place to accommodate the Project before the environmental permitting process could proceed, made clear that the Roşia Montană Project was blocked by the State.<sup>71</sup> Indeed, as the Ministry of Culture spokesperson emphasized when issuing the 2015 LHM in relation to the Roşia Montană historical monument, “[a]t such a site, all mining activity is prohibited.”<sup>72</sup>

30. Even if one were to assume that the 2015 LHM was not a permanent obstacle for the Roşia Montană Project because recognition of the valid and binding ADCs remained a possibility, at least theoretically, the State’s nomination to list the Roşia Montană Mining

---

<sup>68</sup> UNESCO Nomination Document (C-1892) at 131 (emphasis in original).

<sup>69</sup> See Memorial ¶¶ 158-161 and Schiau ¶¶ 31-32 (both noting that by law the declassification procedure is commenced *ex officio* by virtue of an ADC).

<sup>70</sup> Ministry of Culture press release (C-911); Gligor ¶¶ 71-73; Claimants’ Opening (2019) vol. 2:58. See also Claimants’ Opening (2019) vol. 7:10-11 (Minister of Culture Hunor stating that declassification of Cărnic from the LHM would not happen until there was a new economic agreement and a full Government decision on the Project).

<sup>71</sup> See Reply ¶¶ 282, 284; Claimants’ PO27 ¶ 217. See also, e.g., Counter-Memorial ¶¶ 58-62, 229; Rejoinder ¶¶ 252-258.

<sup>72</sup> News Article, Jan. 14, 2016 (C-1356); Claimants’ Opening (2019) vol. 7:21.

Landscape as a UNESCO World Heritage site was a different matter because the UNESCO application triggered a separate set of protections that were required under Romanian law to be reflected in the urbanism plan for the area.<sup>73</sup> As noted above, while aligning the urbanism plan with the proposed mining Project was not a legal prerequisite for completing the environmental permitting process, a construction permit can only be issued in accordance with the urbanism plan for the area.<sup>74</sup> No such permit could be issued for the Project area as long as the urbanism plan reflected for the same area a mandatory protection program for the UNESCO site.

31. Notably, most recently, in his interview regarding the UNESCO application, when asked how the UNESCO application could be reconciled with the eleven ADCs issued in the area of the Project, Minister Gheorghiu confirmed those ADCs are now irrelevant to the State, as he stated, “because there isn’t only an archaeological heritage, but also a landscape heritage. And in this case, it was considered that from the overall perspective it is an area of interest for heritage protection.”<sup>75</sup> Thus, whereas declassification of the historical monument in accord with the ADCs would remove Roșia Montană as an archaeological site from the LHM, the site, as a cultural landscape, would remain a protected UNESCO site. As such it would remain subject to the protections established in law for the protection of UNESCO sites, which must be reflected in the urbanism plan thus prohibiting any possible construction permit for the Project.

32. While the UNESCO application was still pending, Respondent argued that it was “in its early stages and its outcome [wa]s uncertain.”<sup>76</sup> Although legal protections for the area, as noted above, already were in place as a result of the application and prevented mining from proceeding, it is correct that the scope of the protections that ultimately would be mandated by a

---

<sup>73</sup> Reply ¶ 283; Podaru ¶¶ 349-357; Claimants’ PO27 ¶ 217; Claimants’ Opening (2019) vol. 7:35.

<sup>74</sup> Podaru ¶¶ 132-151, Mihai II ¶¶ 112-120. *See also* Claimants’ PHB ¶¶ 98-116.

<sup>75</sup> Interview of Minister of Culture Bogdan Gheorghiu and others, Radio Guerilla, July 8, 2021 (video and transcript) (C-2986) at 2. *See also* Ivașcu on *Roșia Montană* (C-1921) at 2 (“Of note is also that Law no. 5 of 2000, as well as Law 422 of 2001 classified this site as a historical monument of national and universal importance. Therefore, we are also protected by our laws and there can be no exploitation there, as you very well know, because in order to obtain an exploitation permit you need approvals from the Ministry of Environment, that National Agency for Mineral Resources and, most definitely, from the Ministry of Culture, and this will not happen. So, no exploitation is allowed there throughout this period, nothing will happen, except for Romania potentially losing 4.4 billion dollars.”); Gligor II ¶ 124.

<sup>76</sup> Counter-Memorial ¶ 417.

UNESCO inscription arguably remained uncertain. Now that the Roșia Montană Mining Landscape has been inscribed as a World Heritage site, however, the scope and nature of protection mandated by that status is clear and there is no longer any uncertainty regarding the fact that mining in Roșia Montană is not permissible as a matter of Romanian law, as it was not permitted previously *de facto* since the Government politically repudiated the Project in September 2013 (or in the two prior years while it blocked permitting for political reasons). Indeed, underscoring that reality, the Roșia Montană Mining Landscape also was inscribed onto UNESCO's List of World Heritage in Danger "pending the removal of threats to its integrity posed by possible extractive activities."<sup>77</sup>

33. It is also clear, as the UNESCO inscription itself reveals, that it is the entire Roșia Montană Mining Landscape that is subject to the UNESCO protection, and not only Roman galleries or other distinct features that the Project would have preserved *in situ*.<sup>78</sup>

34. As there can be no dispute about those facts, Respondent stated with regard to the UNESCO application that "[i]f it progresses successfully, and if it becomes apparent that it may adversely affect RMGC's rights, the Government will take the appropriate measures in accordance with the law."<sup>79</sup> Needless to say, the Government has not taken any measures to compensate RMGC or Gabriel.

35. The principal relevance of these developments to the claims presented in this case is that they further confirm and remove any claimed uncertainty that the Government in fact had previously already fully repudiated the Roșia Montană Project and the State's joint venture with Gabriel in RMGC.<sup>80</sup> They show Respondent's repeated arbitration narrative, that it remained

---

<sup>77</sup> UNESCO's July 27, 2021 announcement (C-2984) at 2-3.

<sup>78</sup> UNESCO's July 27, 2021 announcement (C-2984); UNESCO Nomination Document (C-1892); Interview of Minister of Culture Bogdan Gheorghiu and others, Radio Guerilla, July 8, 2021 (video and transcript) (C-2986) at 7 (Minister Culture Gheorghiu confirming that while "ICOMOS recommended the inclusion of Roman galleries in UNESCO," "the entire area is in the UNESCO file, not only the Roman galleries").

<sup>79</sup> Counter-Memorial ¶ 417; Rejoinder ¶ 713.

<sup>80</sup> Claimants' PHB § VI.

open to RMGC to obtain permitting and develop the Project, was nothing but a disingenuous contrivance and cannot be accepted.<sup>81</sup>

36. Claimants have shown that Romania subjected Gabriel's investments to treatment that culminated on September 9, 2013 in breaches of several articles of both BITs.<sup>82</sup> Romania's wrongful conduct constituted, among other treaty breaches, an unlawful, indirect, *de facto* expropriation of the Project Rights, which caused Gabriel to sustain losses equal to the value of those rights.

37. Respondent has argued that the fact that Gabriel and RMGC thereafter nevertheless retained rights in legal form proved there was no expropriation. That is incorrect of course. By the time Romania nominated the Roșia Montană Mining Landscape to UNESCO in 2016, leading to UNESCO's inscription of the site onto the World Heritage List, the damage already had been done because the Project Rights already had been stripped of value by Romania's earlier wrongful conduct.

38. But for the fact that Romania already had repudiated Gabriel's investments in RMGC as of the date of the earlier political rejection in September 2013, Romania's subsequent repudiation of Gabriel's investments in RMGC, evidenced, *inter alia*, in its UNESCO submission, would be sufficient to do so and thus to constitute breaches of the BITs as previously detailed.<sup>83</sup> The basis for Gabriel's claims including as to compensation thus remains as pleaded in Claimants' earlier submissions.<sup>84</sup>

39. If the Tribunal were to conclude, notwithstanding the overwhelming evidence, that the Government had not definitively terminated the Roșia Montană Project and the State's joint venture with RMGC in breach of both BITs prior to the Government's nomination of the Roșia Montană Mining Landscape as a World Heritage Site and UNESCO's inscription, those developments unquestionably brought the Roșia Montană Project and the RMGC joint venture to

---

<sup>81</sup> *E.g.*, Claimants' PHB ¶ 200.

<sup>82</sup> Claimants' PHB § VII.

<sup>83</sup> *E.g.*, Claimants' PO27 ¶¶ 219-223.

<sup>84</sup> Claimants' PHB § VIII.

a formal end, with definitive legal effect under Romanian law, and in breach of both BITs for all the reasons exhaustively detailed.

40. Similarly, if the Tribunal thus were to conclude that damages must be assessed with reference to these later developments, Claimants' observations set forth in their earlier submissions explain why any assessment of damages must be based on a measure of loss absent the impacts of Romania's wrongful conduct. Such an assessment may be done by using an indexing approach to observe the progression of Gabriel's market capitalization from a "last clean date" to the valuation date.<sup>85</sup> If needed, updated data in the categories already in the record<sup>86</sup> is in the public domain and could be provided readily by the Parties.

#### **D. Respondent's Jurisdictional Objection Lacks Merit**

41. Whereas Respondent has argued that this Tribunal does not have jurisdiction to consider facts and events that post-date Claimants' January 20, 2015 notice of dispute, Respondent's objection on these and similar grounds lacks merit.<sup>87</sup>

42. Among other reasons previously addressed, Claimants notified the Romanian State that their dispute arose out of the fact that Romania had prevented implementation of the Roşia Montană Project for political reasons, and the record is clear that the State's UNESCO nomination is integrally connected to the political repudiation of the Roşia Montană Project.

43. Respondent well understands that its decision to seek UNESCO status for the entire area of Roşia Montană falls within the scope of the dispute submitted to this Tribunal, which is why Romania postponed its application before deciding to resume the UNESCO procedure immediately after the 2019 hearing.<sup>88</sup>

---

<sup>85</sup> See Claimants' PHB § X.H.2. See also *id.* ¶ 439 and n. 897.

<sup>86</sup> Claimants' PHB ¶ 439 and n. 897 (discussing the "Chart Data" tab of the Excel file that Claimants submitted as a demonstrative on September 26, 2020 based on data in C-2860.04.xlsx, C-1853.04.xlsx, and C-2091.02.xlsx). The "Chart Data" tab includes, among other things, Gabriel's share price, traded volume of shares, and market capitalization as well as data for various indices. The data is updated as of March 31, 2020 when the Parties submitted rebuttal documents.

<sup>87</sup> PO27 ¶ 225; Reply §§ VII.A.3, VII.B.2; Claimants' Opening (2019) vol. 8:6-18.

<sup>88</sup> Ministry of Culture Press Release, Feb. 5, 2020 (C-2983) ("The preservation of the Roşia Montană heritage is a pressing necessity, not just an intangible concept that will wait for resolution in international forums.").

### III. ISSUANCE OF COURT DECISION REJECTING THE LEGAL CHALLENGE TO THE SECOND CÂRNIC ADC

44. By letter dated May 27, 2021, the court hearing the challenge to the second Cârnic ADC transmitted to the parties to that action – which do not include RMGC – its decision rejecting the application to annul the ADC and attesting that the decision is “final and irrevocable.”<sup>89</sup> The relevance of this development to issues in dispute in this case is described briefly below.

45. Between 2001 and 2008, based on the approvals of the National Archaeology Commission, the Ministry of Culture issued ADCs for areas covering approximately 90% of the Roșia Montană Project footprint, including for the Cârnic massif.<sup>90</sup> Although the ADC originally issued for Cârnic was annulled, a further application was made based on an updated research file. Following Gabriel’s and RMGC’s commitment to invest a further US\$140 million in cultural heritage preservation, in July 2011, the Ministry of Culture issued the second Cârnic ADC (ADC 9/2011).<sup>91</sup>

46. As described above, as the 2010 LHM, which had been issued in the meantime, did not reflect the second Cârnic ADC, Minister of Culture Hunor announced in July 2011 that removal of Cârnic from the 2010 LHM was to follow as the next step in the process.<sup>92</sup> Starting in August 2011, however, the Minister of Culture shifted his position in line with the Boc Government’s approach to the Project stating that an update to the 2010 LHM for Roșia Montană Project in relation to the second Cârnic ADC would not be made until economic terms were “clarified” and a political decision was taken by the Government.<sup>93</sup> Likewise, while the State

---

<sup>89</sup> Letter from the Buzău Tribunal to the Alba County Culture Department dated May 27, 2021 enclosing Decision No. 770/2020 of Buzău Tribunal dated Dec. 10, 2020 (C-2990).

<sup>90</sup> Memorial ¶¶ 160.

<sup>91</sup> Memorial ¶¶ 326-328; Gligor ¶¶ 100-104.

<sup>92</sup> *Kelemen on the Archaeological Discharge Certificate for Roșia Montană*, Mediafax.ro, July 14, 2011 (C-1345); Memorial ¶¶ 329-330; Claimants’ Opening (2019) vol. 7:10.

<sup>93</sup> Claimants’ PHB ¶¶ 113, 233; Claimants’ Opening (2019) vol. 3:10-13; *Roșia Montană stirs up tensions in UDMR*, Aug. 24, 2011 (C-1310).

admitted that the 2010 LHM included other errors that had to be corrected, correction of those errors was blocked at the political level.<sup>94</sup>

47. Respondent argues that the fact that NGOs filed a legal action challenging the legality of the second ADC issued for Cârnic shows that it was NGOs, not the State, that blocked the Project.<sup>95</sup> The record demonstrates otherwise. Although a legal action challenging the second Cârnic ADC was filed soon after it was issued, the ADC nevertheless remained in effect. Yet, the Minister had made clear in August 2011 that the Ministry of Culture was not going to “take another step, no matter what the step” to advance the Roșia Montană Project “[u]ntil the contract and the participation of the Romanian state in the joint venture [we]re renegotiated.”<sup>96</sup> Thus, although it was incumbent upon the Ministry of Culture to update and correct the 2010 LHM by removing Cârnic from the list, the Ministry would not do so.<sup>97</sup> Indeed, it was not until January 30, 2014 (after the political repudiation of the Roșia Montană Project) that the court decided to suspend the effects of the second Cârnic ADC pending a final decision on the request for its annulment.<sup>98</sup>

48. Respondent argues that the uncertainty regarding the litigation relating to the second Cârnic ADC impacts the value of the Project Rights and Respondent criticizes SRK for allegedly failing to take uncertainty resulting from this litigation sufficiently into account in assessing reserves for the Roșia Montană Project.<sup>99</sup> As Claimants have observed, however, the fact that NGOs challenged the ADC issued for Cârnic was publicly known and reflected in Gabriel’s market price.<sup>100</sup>

---

<sup>94</sup> Reply ¶¶ 260-261, n. 576 (noting admitted software error relating to Orlea listing in 2010 LHM); Claimants’ PHB ¶113.

<sup>95</sup> See Respondent’s PO27 ¶ 224 and n. 367 (citing Rejoinder ¶ 689 and Counter-Memorial ¶ 385).

<sup>96</sup> Claimants’ PHB ¶ 233.

<sup>97</sup> See Memorial ¶¶ 158-161 and Schiau ¶¶ 31-32 (both noting that by law the declassification procedure is commenced *ex officio* by virtue of an ADC).

<sup>98</sup> Schiau ¶ 93.

<sup>99</sup> *E.g.*, Respondent’s PHB ¶ 637 *et seq.*

<sup>100</sup> Claimants’ Second PHB ¶¶ 137(b), 245, 258 n. 662. See also Henry II n. 198.

49. The court issued its decision rejecting the application to annul the second Cârnic ADC and attested that the decision is “final and irrevocable.”<sup>101</sup> The court rejected on the merits all of the arguments presented by the NGO claimants against the legality and expert basis for the ADC decision.<sup>102</sup> Thus, the court held, contrary to the arguments presented, *inter alia*, that the research upon which the decision was based followed correct procedures and was exhaustive,<sup>103</sup> that “the decision to discharge was not arbitrarily made ... but was a result of a complex archaeological research, carried out over several years by a complex team, completed by a report subsequently approved by the National Commission of Archaeology,”<sup>104</sup> that significant vestiges in the area were to be preserved *in situ*, that the discharge decision was consistent with the Valleta Convention on the Protection of Archaeological Heritage,<sup>105</sup> that the research was supervised by Romanian experts,<sup>106</sup> and that the second Cârnic ADC was based on updated research, so that the annulment of the earlier ADC issued was not relevant.<sup>107</sup>

50. Although the State’s culture authorities were party to the proceeding and thus aware of the court’s ruling, which evidently was first announced by the court in open session on December 10, 2020,<sup>108</sup> the Ministry of Culture did not alter its position in regard to the delineation of the Roșia Montană historical monument or the resumption of the procedure relating to the UNESCO application.<sup>109</sup>

51. Thus, in disregarding this decision, the Government has again acted consistent with its repudiation of the Roșia Montană Project and its joint venture with Gabriel.

\*\*\*\*\*

---

<sup>101</sup> Letter from the Buzău Tribunal to the Alba County Culture Department dated May 27, 2021 enclosing Decision No. 770/2020 of Buzău Tribunal dated Dec. 10, 2020 (C-2990).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 45-51.

<sup>104</sup> *Id.* at 51-52.

<sup>105</sup> *Id.* at 54.

<sup>106</sup> *Id.* at 54-55.

<sup>107</sup> *Id.* at 57-58.

<sup>108</sup> *Id.* at 2.

<sup>109</sup> *See also* Reply ¶¶ 274-276.



Respectfully submitted,

*White & Case LLP*

**Țuca Zbârcea & Asociații**  
Victoriei Square  
4-8 Nicolae Titulescu Ave.  
Sector 1, Bucharest 011141  
Romania

---

**WHITE & CASE**LLP  
701 Thirteenth Street NW  
Washington, DC 20005  
USA

October 29, 2021

*Counsel for Claimants*