

COURT DECISION

IN THE NAME OF THE REPUBLIC OF BELARUS

March 27, 2018

Brest

The Moskovski District Court of Brest comprising the presiding judge A. S. Korogoda, in the presence of secretary V. A. Pekarskaya, with the participation of the plaintiff NGO "Ecohome", represented by S.A. Magonov, plaintiff D. V. Bekaluk, his legal representative, attorney V. M. Yanishevski, plaintiffs D. A. Lepesevich and E. A. Makarevich, representatives of the defendant LLC "IPower" lawyers S. A. Demyanenko and K. A. Zhukovskaya, representatives of the defendant Brest District Executive Committee, N.A. Korchenkov and A.A. Popova, representatives of a third party SI "Administration of FEZ "Brest" F.F. Kolonchuk and A.A. Litovchik, having considered in open court proceedings a civil case under the claim of the NGO "Ecohome", Dmitry V. Bekaluk, Demian A. Lepesevich and Elena A. Makarevich to LLC "IPower" and the Brest District Executive Committee for complete suspension of activity on implementation of the "Accumulator plant of LLC "IPower" with its own boiler on natural gas, address: Brest district, of FEZ "Brest", region "Airport" project,

FOUND THE FOLLOWING:

The Moskovski District Court of Brest was addressed by NGO "Ecohome", D.V. Bekaluk, D. A. Lepesevich and E. A. Makarevich with a claim to LLC "IPower" LLC for complete suspension of activity on implementation of the project "Accumulator plant of LLC "IPower" referring to the fact that, in accordance with articles 12 and 15 of the Law of the Republic of Belarus "On environmental protection", everyone has the right to a healthy environment, and the public has the right to participate in public discussions of reports on assessment of environmental impact of economic activity. The defendant is planning to build the "Accumulator plant with its own boiler on natural gas, address: Brest district, of FEZ "Brest", region "Airport" facility. In accordance with the legislation, an environmental impact assessment (hereinafter referred to as EIA) was conducted for this facility, as well as a public discussion of the EIA report. The plaintiffs hold the opinion that these procedures were carried out by the organizers in violation of legal requirements, which did not allow the public to exercise the right to submit an application for holding a meeting to discuss the EIA report and conducting public environmental assessment, and the EIA report submitted for discussion is not the document that was later submitted for state environmental expert assessment. Furthermore, according to the plaintiffs, the implementation of this project will have a significant harmful impact on the environment of the region.

Subject to the provisions of article 7 of the Civil Procedural Code of the Republic of Belarus, articles 12, 13, 15 and 100 of the Law of the Republic of Belarus "On environmental protection", articles 6 and 9 of the Aarhus Convention, the plaintiffs NGO "Ecohome", D.V. Bekaluk, D. A. Lepesevich and E. A. Makarevich requested complete suspension of economic activity of "IPower" LLC under implementation of the "Accumulator plant of "IPower" LLC with its own boiler on natural gas, address: Brest district, of FEZ "Brest", region "Airport" project on a temporary basis, until the violations of the right of the public to participate in environmental decision-making are eliminated, i.e. until public discussion of a relevant EIA report is conducted.

In line with the ruling of the Moskovski District Court of Brest dated February 16, 2018, the SI "Administration of FEZ "Brest" was brought into the proceedings as a third party.

In accordance with the ruling of the Moskovski District Court of Brest dated February 27, 2018, the Brest District Executive Committee was brought into the proceedings as a codefendant.

In court, the representative of the plaintiff S. A. Magonov, plaintiff D.V. Bekaluk and his representative lawyer V. M. Yanishevski, the plaintiffs D. A. Lepesevich and E. A. Makarevich supported the claim and, in aggregate, explained that the organizers of public discussion of the EIA report had violated the procedure thereof, therefore the activity of LLC "IPower" related to implementation of the "Accumulator plant of "IPower" LLC" project must be suspended until public discussion of a relevant EIA report is conducted. At the same time,

the plaintiffs indicated that they became aware of the defendant's planned activity for the construction of the plant only in the fall of 2017 - winter of 2018.

In court, representatives of the defendant "IPower" LLC lawyers S. A. Demyanenko and K. I. Zhukovskaya did not admit the claim and explained that the legislation does not provide for the possibility of a second public discussion of an EIA report, for which a conclusion of the state environmental expert assessment has been received.

In court, representatives of the defendant Brest District Executive Committee N. A. Korshenkov and A. A. Popova did not admit the claim and explained that in the course of public discussion of the EIA report for the "Accumulator plant of "IPower" LLC project that took place in the period from December 08, 2016 to January 07, 2017, the rights of the public were not violated, since no appeals with objections were received by the organizers of the discussion.

Representatives of the third party SI "Administration of FEZ "Brest" F. F. Kolonchuk and A. A. Litovchik did not admit the claim in court.

In line with part 2 of Article 12 of the Law of the Republic of Belarus of November 26, 1992 "On environmental protection", citizens have the right to participate in public discussions of reports on environmental impact assessment; claim compensation for damage caused to their life, health, property as a result of harmful effects on the environment in court, and to claim suspension (ban) of economic and other activity of legal entities and individual entrepreneurs that has a harmful impact on the environment.

According to paragraph 12 of part 1 of Article 15 of the Law of the Republic of Belarus of November 26, 1992 "On environmental protection", public associations that operate in the field of environmental protection have the right to: claim compensation for damage caused to the life, health, property of their members (participants) as a result of harmful effects on the environment in court, and to claim suspension (ban) of economic and other activity of legal entities and individual entrepreneurs that has a harmful impact on the environment. In accordance with part 2 of Article 100 of the Law of the Republic of Belarus of November 26, 1992 "On environmental protection", public associations operating in the field of environmental protection and citizens have the right to claim suspension (ban) of economic and other activity that has a harmful impact on the environment, if such activity results in violation of the requirements in the field of environmental protection, causes environmental harm or poses threat of environmental harm in the future.

In line with Paragraph 33 of the "Regulation on the procedure for organizing and conducting public discussions of drafts of environmentally significant decisions, reports on environmental impact assessment, registering the adopted environmentally significant decisions" approved by Resolution of the Council of Ministers of the Republic of Belarus dated June 14, 2016 No. 458 (the version in force at the time of public discussions), the procedure for conducting public discussion of the EIA report includes:

- 33.1. informing citizens and legal entities about public discussion;
- 33.2. ensuring access to the EIA report for citizens and legal entities at the customer's premises and (or) at the premises of local executive and administrative bodies, as well as in other accessible places, along with placing the EIA report in the "Public Discussions" section on the official website of the organizer of public discussions on the Internet;
- 33.3. familiarization of citizens and legal entities with the EIA report;
- 33.4. if citizens or legal entities are interested: notice of the date and venue of the meeting to discuss the EIA report; holding a meeting to discuss the EIA report in the territory of the Republic of Belarus and the parties affected;
- 33.5. collection and analysis of comments and suggestions, preparation of a summary of feedback resulting from public discussion of the EIA report.

The court found that "IPower" LLC, which is a resident of the FEZ "Brest", applied for the allocation of land for implementation of the investment project "Accumulator plant of "IPower" LLC with its own boiler on

natural gas, address: Brest district, of FEZ "Brest", region "Airport". On November 03, 2016 the First Deputy Chairman of the Brest District Executive Committee approved the plot selection certificate.

On November 15, 2016 by decision of the Brest District Executive Committee the "IPower" LLC was allowed to conduct survey and design work pertaining to the "Accumulator plant of LLC "IPower" with its own boiler on natural gas, address: Brest district, of FEZ "Brest", region "Airport" facility.

On November 24, 2016 the Brest regional newspaper "Zarya nad Bugom" (issue No. 47) published a notice on public discussions of the EIA report on the "Accumulator plant of "IPower" LLC" facility at the request of "IPower" LLC, indicating the timeline for public discussions from November 28, 2016 to December 27, 2016 and announcing the possibility to submit applications for public hearings (meetings) until December 08, 2016.

On December 02, 2016 by order of the Brest District Executive Committee No.221-R a Commission for the Conduct of Public Discussion of the EIA Report for the above mentioned project was established and its composition was approved. Members included: Deputy Chairman of the Brest District Executive Committee N. A. Korchenkov Head of the Brest City and District Inspectorate for Natural Resources and Environmental Protection P. I. Brysh, Head of Land Management Service of the Brest District Executive Committee S. A. Gultsov, Director of "IPower" LLC S. I. Melnykovich, Head of Architecture and Construction Department of the Brest District Executive Committee V. G. Mikhnyuk and Chief Doctor of HF "Brest Zone Centre of Hygiene and Epidemiology" G. I. Radchenko. The Commission started working on December 05, 2016.

The Court received a copy of the notice of public discussions of the EIA report for the "Accumulator plant of "IPower" LLC" project with the text of a resolution by Deputy Chairman of the Brest District Executive Committee "For posting on the REC website", dated December 05, 2016. It follows from the notice that public discussions will take place from December 08, 2016 to January 07, 2017, and applications stating the need to hold public hearings (meetings) can be submitted until December 22, 2016.

From the explanatory note of the Chief Specialist of the Department for Ideological Work, Culture and Youth Affairs of the Brest Regional Executive Committee, E. I. Sabitova, it follows that on December 06, 2016, in line with the instructions of the Deputy Chairman of the Brest Regional Executive Committee, she posted a notice about public discussions of the EIA report on the "Accumulator plant of "IPower" LLC " facility on the official website (brestrik.gov.by), in the section "Public Discussions".

The case file contains a copy of the "screen shot of a personal computer" with the page of the Brest District Executive Committee open in the browser, which shows the system date and time of December 07, 2016, 13.56, section "Public opinion" and a link to view and download the file "Conducting environmental impact assessment (EIA) for the facility: "Accumulator plant of "IPower" LLC".

On December 08, 2016 the newspaper "Zarya nad Bugom" (issue No. 49) published a notice on public discussions of the EIA report for the "Accumulator plant of "IPower" LLC " with its own boiler on natural gas, address: Brest district, FEZ "Brest", region "Airport" facility at the request of "IPower" LLC, with the timeline for public discussions from November 28, 2016 to December 27, 2016, with the possibility to submit an application stating the need for public hearings (meetings) until December 22, 2016.

From the minutes of public discussions of the EIA report on the «Accumulator plant of "IPower" LLC" facility, approved on January 09, 2017 by the Deputy Chairman of the Brest Regional Executive Committee, it follows that the procedure of public discussions was held from December 08, 2016 to January 01, 2017; within the legally established timeframe neither requests for meetings to discuss the EIA report, nor comments or suggestions were received from the public. Based on the results of its work, the Commission concluded that public discussions had been conducted, and the materials of public discussions are to be included in the EIA report, which should be submitted for state environmental expert assessment as part of the project documentation.

From the conclusions of the state environmental expert assessment, approved by order of the SEI "Republican centre of the state environmental expert assessment and professional improvement of executives and specialists" managed by the Ministry of Natural Resources and Environmental Protection of

the Republic of Belarus dated May 25, 2017, it follows that solutions contained in the "Accumulator plant of "IPower" LLC" with its own boiler on natural gas, address: Brest district, FEZ "Brest", region "Airport" construction project meet legal requirements in the field of air protection, as well as the legislation on water, protection and use of fauna, subsoil, land, waste management, and that in the field of state environmental expert assessment, strategic environmental assessment and environmental impact assessment. With account of the above, the state environmental expert assessment approved the "Accumulator plant of "IPower" LLC with its own boiler on natural gas, address: Brest district, FEZ "Brest", region "Airport" construction project based on compliance thereof with legislation on environmental protection and rational use of natural resources.

Upon review of the body of evidence collected, the court concludes that the notice to citizens and legal entities on public discussion of the EIA report for the planned economic activity under the "Accumulator plant of "IPower" LLC construction project was published in the local newspaper of the Brest Region and on the official website of the Brest District Executive Committee and content of the publication met the requirements of the "Regulation on the procedure for organizing and conducting public discussions of drafts of environmentally significant decisions" approved by Resolution of the Council of Ministers of the Republic of Belarus dated June 14, 2016 No. 458 Along with other mandatory elements of the content of the notice, it was stated that the EIA documentation can be found in the premises of "IPower" LLC with the address and contact phone numbers provided, as well as on the website of the Brest Regional Executive Committee. The notice also has it that a request stating the need for public hearings can be sent to the Brest District Executive Committee before December 22, 2016, and a statement of intent to conduct public environmental assessment can be sent to the specified postal and email address of "IPower" LLC.

According to Paragraph 44 of the "Regulation on the procedure for organizing and conducting public discussions of drafts of environmentally significant decisions, reports on environmental impact assessment, registering the adopted environmentally significant decisions" approved by Resolution of the Council of Ministers of the Republic of Belarus dated June 14, 2016 No. 458 (the version in force at the time of public discussions), no meeting to discuss the EIA report shall be conducted if the public has requested the relevant local executive and administrative bodies to hold it within 10 working days from the date of publication of the notice.

Since the public did not request the Brest District Executive Committee to hold a meeting to discuss the EIA report within the established timeframe from the date of publication of the notice from December 08, 2016 to December 22, 2016, in line with the legislation the meeting was not held, and public discussions were recognized as valid by the minutes of the Commission of the Brest District Executive Committee dated January 09, 2017.

Thus, the procedure for public discussion of the EIA report was actually conducted.

At the same time, the typo existing in the publication of the notice in the district newspaper "Zarya nad Bugom" No. 49 dated December 08, 2016 concerning the period of public discussions from November 27, 2016 to December 27, 2016 instead of the actual dates of December 08, 2016 to January 07, 2017 is not considered to be a reason for suspending economic activity, since the website of the Brest District Executive Committee indicated the timeframe for public discussions correctly from December 08, 2016 to January 07, 2017, and no requests for public discussions were received both within the established period and after expiration thereof. Moreover, in court the plaintiffs explained that they only learned about the public discussion and the planned construction of the plant in the autumn of 2017 - winter of 2018.

The publication of the notice in the district newspaper "Zarya nad Bugom" No. 47 dated November 24, 2016 has no legal significance in the case and does not violate the rights of the plaintiffs, since its placement took place before the commencement of the public discussion procedure, establishment of a Commission in the Brest District Executive Committee and was actually informational in its nature.

The plaintiffs' arguments that the EIA report posted for public discussion on the website of the Brest District Executive Committee and the EIA report sent for state environmental expert assessment differ in volume do not constitute grounds for suspending economic activity, since the information letter of "Ecologiya service"

LLC No.24 dated March 01, 2018 indicates that following the appearance of clarifying information in the course of development of the section "Environmental protection", additions were made to the EIA report to provide more detail on the nature of the technological process and the impact of the accumulator plant under development on the environment. When additions were introduced, no increase in the amount of gross emissions of pollutants, volume of waste water, allocation of additional land, or changes in the purpose of the facility occurred. Conclusions on the possibility of implementing design solutions were not changed. Additions to the EIA report did not affect the overall concept of environmental impact assessment, and a second public discussion procedure is not required. Furthermore, the full EIA report that was used to draft the conclusions of the state environmental expert assessment was made publicly available on the website of the Brest Regional Executive Committee, which was not disputed by the plaintiffs in court, and a copy thereof is attached to the claim.

The plaintiffs did not provide any evidence of violations of the requirements in the field of environmental protection, environmental harm caused or posing danger of causing such harm in the future, neither were such evidence seized during the court session.

Plaintiffs' arguments on violation of the procedure for public discussion of the EIA report and potential negative impact of implementation of the "Accumulator plant of "IPower" LLC" project are refuted by the conclusion of the state environmental expert assessment and do not constitute a reason for suspension of economic activity of the enterprise. The legislation does not provide for the possibility of repeated public discussions in the presence of a duly drawn up conclusion of the state environmental assessment.

In view of the above, the court concluded that the claim should be denied.

Based on the above, guided by Articles 302-306 of the Civil Procedural Code of the Republic of Belarus, the court

RESOLVED:

that the claim of NGO "Ecohome", Dmitry V. Bekaluk, Demian A. Lepesevich and Elena A. Makarevich to the ""IPower" LLC and the Brest District Executive Committee on complete suspension of activity on implementation of "Accumulator plant of "IPower" LLC with its own boiler on natural gas, address: Brest district, FEZ "Brest", region "Airport" project be denied.

The resolution can be appealed against and challenged in the Brest Regional Court through the Moskovski District Court of Brest within ten days from the date of its announcement.

Presiding:

judge of the Moscovski District

Court of Brest

/signature/

A. S. Korogoda

The copy is correct.

The decision has not entered into force.

/signature/

/Each page of document is sealed with court seal with national emblem of the Republic of Belarus on the middle and text Moskovski District Court of Brest /