Annex 8

Decision № 5969 dated May 15, 2017, of SAC in administrative case No. 14187/2015, V-th division, Judge-Rapporteur Iliana Slavovska

Art. 59, para. 2 of the Code of Administrative Procedure

Art. 85, para. 4 of the Environmental Protection Law (EPL)

Art. 85, para. 1 and 2 of the EPL

The proceedings are in accordance with Art. 208 - 228 of the Code of Administrative Procedure (CAP).

Case was initiated on a cassation appeal submitted by the interim mayor of O. P. against a Decision No. 1756 dated October 1, 2015, in administrative case No. 1443/2014 of the Administrative Court of P., which annulled Decision No. ПВ-3-ЕО/08.05.2014 of the Director of The Regional Inspectorate of Environment and Water (RIEW) - P. With the latter was ordered no environmental assessment to be carried out for "Amendment of the General Development Plan (GDP) of the city of P. in scope - Sports and Attraction Zone (SAZ) within the territory of the sports complex "Recreation and Culture "

On the suggested arguments for incorrectness of the decision, such as the decision was rendered incorrect by reason of violation of the substantive law and lack of justification, it is requested the annulment of the decision and to be rendered a new one on the substance of the dispute by which the appeal of a non-profit association "Civil Control - Animal Protection" against the decision of RIEW - P. be rejected. Specifically, the reasons for the incorrectness of the decision are that when discussing the mandatory carrying out of an environmental assessment when amending the GDP, it was not clear what the opinion was regarding the provision of Art. 85, para. 4 of the Environmental Protection Law (EPA) applied by the Director of RIEW, regarding the lack of need to carry out an environmental assessment (EA), as there were unfinished sentences. Furthermore, it is stated that under item 5 of the "exposition" (probably the appellant has in mind the reasons for the decision) it was considered by the administrative authority that it would not provide independent and specific reasons when issuing the procedural decision, from where the appellant concluded that, upon its entry into legal force, the Director of RIEW P. would be unable to implement this decision. In item 2 of the appeal, the appellant expresses allegations reflecting his opinion regarding the legal conformity of the repealed administrative act rendered by the Director of RIEW-P.

The Director of RIEWA also submitted a cassation appeal against the decision, which alleges that it was incorrectly found in the appealed decision that the administrative act rendered by the

Director did not present reasons, and also it was incorrectly found that there was no analysis of the specific location, nature and scale of the plan, and, besides, it was not required by the applicable legislation. The Director considers that there is also no legal requirement to reflect investment proposals, plans, programmes and projects of a similar nature which, cumulatively with the process amendment of the GDP, would have a negative impact; The Director considers that the court incorrectly founds that the provisions of Art. 81, para. 1 and para. 5 of the EPL and Art. 31 of the Biodiversity Law (BDL) are applicable in this case. On those grounds, annulment of the decision is requested as well as rendering of a new decision rejecting the appeal against the administrative act.

The defendant - non-profit association "Civil Control - Protection of Animals" in a written defence challenged the cassation appeals as ungrounded, setting out detailed reasons for each of them.

The Prosecutor of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the unfounded nature of the two cassation appeals.

The Supreme Administrative Court (SAC), the composition of the Fifth Division, in conducting an official examination of the contested decision under Art. 218, para. 2 of the CAP and taking into account the arguments set out in the cassation appeal, considers the following to be established:

Cassation appeals are submitted by actively legitimized parties within the term under Art. 211 CAP and are admissible and after their examination in substance considered them to be unfounded for the following reasons:

By the contested decision, the Court of First Instance, after performing a verification as to legal conformity, found that the contested before the court administrative act was issued by a competent authority, formally complied with the form provided for by the law, as far as the decision is in writing and the essential elements under Art. 59, para. 2, item 1-3 and 5-8 of the CAP were present, but in substance there was an infringement, as the act did not set out separate reasons regarding the analysis of the scope and content of the SAZ development zone under the GDP and the two established zones Sports Zone and Park Attraction Zone under the existing GDP, as there was no analysis of the scope and content of the SAZ zone in relation to possible impacts on protected areas, part of the territory of which falls within the scope of the extension of the SAZ zone - subject to the amendment of the GDP. It was also accepted that compliance with the administrative procedural rules envisaged did not overcome the lack of specific data justifying the conclusion of negligible impact, where no such data were contained in the opinions adopted by the Authority.

In the decision appealed before the Court of First Instance No. ПВ-3-ЕО/2014, the Director of RIEW P. on the grounds of Art. 85, para. 4 and para. 5 of the Environmental Protection Law (EPL), Art. 14, para. 2 of the Ordinance on the terms and conditions for carrying out environmental assessment of plans and programs (EA Ordinance), Art. 31, para. 6 of the Biodiversity Law (BDL), Art. 37, para. 4 of the Ordinance on the terms and conditions for assessing the compatibility of plans, programs, projects and investment proposals with the subject and objectives of protection of protected areas (CA Ordinance), the documentation submitted by

the contracting authority and the opinion of the Regional Health Inspectorate P. decided not to carry out an environmental assessment of the amendment of the GDP of the city of P. in scope - Sports and Attraction Zone (SAZ) within the territory of the sports complex "Recreation and Culture" with contracting authority O. P. At issuing the decision, it was taken into account that with the amendment of the GDP P., it is proposed that the boundaries of the area of the SAZ be changed by aligning them with the boundaries of development zones "Sports Zone" - Zone A and partially "Park and Attraction Zone" - Zone B, established with a detailed park regulation and construction plan "Sports complex - recreation and culture". P. It was accepted that the boundaries of the amendment to the GDP are as follows: to the north - existing road ID No. 510.95331, dike on the river M., rowing channel; south - rowing channel, existing alley, "P. " Str., "S" Str., "Yasna Polyana" Str.; to the east - "K." Blvd., and to the west, a rowing canal.

The Authority based its decision with the following: In an analysis of the scope and content of the SAZ, according to the GDP and the established areas "Sports Area" - Zone A and "Park Attraction Zone" - Zone B, according to the current detailed development plan of 2001, it was concluded that existing sports facilities, sites serving facilities, as well as public service sites marked in yellow in the attached comparative tables, as well as all attraction sites existing with and without development status, as well as not currently realized, but with acquired development rights resulting from a detailed development plan, marked with orange colour of the attached comparative tables, as well as other sites, sobering site, pumping station marked with a purple colour in the attached comparative table, are excluded from zone SAZ (GDP). In doing so, the Authority accepts that the amendment of the plan will create the necessary development conditions for long-term sustainable development of the territory, respecting the principles of functional necessity and complex functionality at all levels, and the actions for future improvements and modernizations of the base in the park "Recreation and Culture" will be secured, where their development will create a legal development basis for investment projects related to their realization.

It was stated that part of the areas north of the existing rowing canal, covered by the plan, partially fall within Natura 2000 protected areas, but do not fall within protected areas under the Protected Areas Law.

It was also accepted that, given the location, nature and scale of the plan, the Authority accepted that no significant negative impact on protected areas and that no destruction, damage or degradation of species subject to the conservation in the nearest protected area BG 0000578 "R. M." and protected area BG0002087 "M. P." were expected, and the implementation of the plan was unlikely to result in a reduction in the size and density of the population of species subject to conservation of protected areas and a reduction in their favourable conservation status.

The Authority also indicated that in the analysis of the factual situation in the area of the investment proposal (? - in this case, the decision was meant to amend the GDP) no significant cumulative impacts on protected areas, as well as no generation of emissions and waste in quantities that would have a significant impact on protected areas were expected.

Upon full verification of the legal conformity of the act in accordance with the provision of Art. 168, para. 1 of the CAP, the court correctly and reasonably concludes the legal non-conformity of the administrative act contested before it.

It was not established by the content of the administrative act contested before the AC - P. any performed analysis of the information presented by the contracting authority and accordingly set out specific and grounded reasons on the basis of which to assess its reasonableness and correctness.

In the decision it was consistently, detailed and reasoned that in the present case the act was rendered in violation of the provision of Art. 85, para. 4 of the EPL, as the reasons presented by the authority are declaratory and unfounded, as they are not supported by the collected evidence.

This conclusion is fully supported by the present composition.

The above provision requires that at assessment of the necessity of performing of environmental assessment of the proposed plan the competent authority shall assess the significance of its impact according to the following criteria: the nature of the plans in relation to: 1. the extent to which it defines the framework for investment proposals and other activities according to their location, nature, scale and operating conditions or according to its forecasts for the allocation of the resources; 2. the importance of the plan for the integration of the environmental considerations, especially with a view to promoting sustainable development; 3. environmental problems relevant to the plan; 4. the importance of the plan for the implementation of Community environmental legislation.

In addition, it provides for consideration of the characteristics of the effects and of the area which is likely to be affected in terms of: probability, duration, frequency, reversibility and cumulative nature of the expected impacts; potential transboundary impact, potential effect and risk to human health or the environment, including as a result of accidents, magnitude and spatial extent of the effects (geographical area and number of population which is likely to be affected), value and vulnerability in the affected area (due to particular natural characteristics or cultural and historical heritage; exceeding environmental quality standards or limit values; intensive land use), impact on areas or landscapes with recognised national, Community or international protection status.

These requirements are not met as the act lacks discussion of the plan according to the criteria set out in the norm. In this case, there are no specific reasons as to the nature of the plan regarding its location and the extent to which it defines the framework for investment proposals and other activities according to their location, nature, scale and operating conditions.

The Act does not cover the requirements of Art. 14, para. 2 and para. 3 of the EA Ordinance, as no reasons are presented, including the preferred alternative regarding the environment and grounds of the conclusion that the implementation of the plan or program does not suggest a significant impact on the environment and human health.

There are no reasons whatsoever as to its importance for integrating environmental considerations with a view to promoting sustainable development, no relevant environmental issues have been discussed. Moreover, there is no discussion on the importance of the plan for the implementation of the Community legislation on the environment, despite the fact that with a Commission Decision of 12.12.2008 adopting, pursuant to Council Directive 92/43/EEC of a second updated list of sites of Community importance of Continental biogeographical region,

protected area BG 0000578 "R.M." was included as such.

There is no discussion of the plan regarding these criteria also in the documents attached to the administrative file on the basis of which the Authority has made its assessment.

In view of the above, the present composition finds that the conclusion in the contested decision on the lack of specific reasons of the body justifying its conclusion not to carry out an environmental assessment of the Amendment to the GDP of the city of P. in scope - SAZ within the territory of the sports complex "Recreation and Culture" with contracting authority O. P. is right.

In the course of the legal proceedings, forensic reports were appointed and accepted, where although contradictory on individual issues, they undoubtedly found that the implementation of the plan was expected to have an impact on the habitats subject to protected areas, where the different experts defined different levels and types of impact. Deteriorated vegetation status was established within the scope of the plan and the natural plants in the area were replaced by new plants other than the existing invasive species.

However, these facts were not the subject of discussion at rendering of the act, in breach of the legal requirements set out above.

Furthermore, in view of the general information submitted by the contracting authority for the plan - grounds for its preparation, according to Art. 8, para. 1, item 2, letter "a" of the EA Ordinance, namely the need to synchronise the existing development plans for the territory, properly AC P. found that this determines a violation of the provision of Art. 134, para. 4 and Art. 135 of the Law on Spatial Planning providing for the contrary.

Justified and relevant to the evidence is the conclusion of the court that in this case, when issuing the act, the authority did not fulfilled the obligations introduced by the provision of Art. 88, para. 1 of the EPL to include in the act a justification for the preferred alternative from the point of view of the environment and monitoring and control measures, as from the content of the act no such justification can be established.

Relevant to the evidence in the case is also the court's conclusion that in this case the authority incorrectly accepts that no environmental assessment should be carried out in this case.

This is so, in the light of the established facts that in the present case it concerns, firstly, spatial planning and, secondly, that although this planning is for a relatively small territory, given the undoubtedly established impact of the amendment of the GDP of the two protected areas - BG 0000578 "P. M." and protected area BG0002087" M. P.", as well as the protected area "Night at Small Cormorant", declared by Order No. РД-644/05.09.2006 of the Minister of Environment and Water (SG No. 85/20.10.2006, amended no. 24/18.03.2014) and the existence of already implemented in plans and investment projects (insofar as the amendment of the GDP is regarding a part falling within the scope of the sports complex "Recreation And Culture") there are the prerequisites under Art. 85, para. 1 and para. 2 of the EPL and Art. 2 of the EA Ordinance.

In doing so, it should be concluded that the process amendment of the GDP also falls within the

category referred to in Art. 31, para. 1 of the BDL, as although it is not directly related to or necessary for these protected areas, it should be assessed whether in interaction with other plans, programs, projects or investment proposals it may have a significant negative impact on these protected areas and locality and accordingly be subject to assessment for its compatibility with the subject matter and objectives of conservation these areas. In addition, the general development plans are included under item 11.1 of Annex No. 1 to Art. 2, para. 1 of the EA Ordinance - Plans and programmes for which environmental assessment is mandatory. Such assessment was performed regarding the GDP and should also be performed to this amendment.

The present composition finds, moreover, that, in addition to being rendered in the absence of reasons, the act is legally non-conforming as found to be in breach of substantive provisions.

In the light of the foregoing, the present composition finds that the administrative act was properly annulled by the appealed decision and the file was returned to the authority for a new ruling, with view to the facts established in the course of the court proceedings and the legal interpretation given to it.

In the light of the foregoing, the present composition of SAC considers that the appealed decision is correct and should be maintained as rendered in the absence of cassation grounds for annulment.

In the retrial of the case, the Authority should comply with the instructions given to it by the AC-P, and in addition at issuing the new act, given the fact that the plan affects the protected areas mentioned above and is in close proximity to a protected area - protected area, it should take into account the objectives of Art. 4 BDL, as well as the cumulative effect of the plan, taking into account its specific characteristics in the light of the plans, programs and investment projects already implemented and in the process of implementation (decision of the CJEU of 14.01.2016 in case C-141/2014).

An independent assessment should be made of the completeness of the documents submitted by the contracting authority - O. P., pursuant to Art. 8, para. 2, item 1 of the EA Ordinance, for which the Authority set out relevant considerations in the act.

In the light of the above reasons and pursuant to Art. 221, para. 2 of the CAP, the Supreme Administrative Court, Fifth Division

RESOLVES:

MAINTAINS Decision No. 1756 dated October 1, 2015, rendered in Administrative Case No. 1443/2014 by Administrative Court P.

The decision is final.