

DECREE

IN THE NAME OF UKRAINE

February 11, 2015 Case № 876/14017/13

Lviv Administrative Court of Appeal

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having considered in open court in Lviv the appeal of the International charitable organization "Environment-People-Law" against the decision of the Lviv District Administrative Court of 28.10.2013 in case №813/7397/13-a on the claim of International charitable organization "Environment-People-Law" to the State Geology and Minerals Service of Ukraine on recognizing illegal actions and obligations to take actions,

The panel of judges, after hearing the judge-rapporteur, the explanations of the plaintiff's representative, examining the case file, checking the legality and validity of the court's decision within the arguments of the appeal, considers that the appeal should be satisfied on the following grounds.

The court of the first instance found and the case file confirms that the purpose of functioning of International charitable organization "Environment-People-Law" is assistance in protecting environmental rights of individuals and legal entities, protection of the environment, promotion of environmental protection and environmental education, science and culture, as well as promotion of the practical implementation of national, regional, local, international programs aimed at improving the environmental situation and protecting the rights of citizens, etc. Among the forms of activity of the plaintiff are the implementation of public environmental control, promotion of environmental and legal knowledge and environmental legislation, participation in improving the practice of law enforcement. Art. 21 of the Law of Ukraine "On Environmental Protection" stipulates that public environmental associations in the area of environmental protection have the right to conduct public environmental expertise; to get free access to environmental information; to appeal in the order established by the law the decision on refusal to release or untimely release of requested environmental information or illegal rejection of an information request and its incomplete satisfaction and other. According to the Regulation on public participation in decision-making in the area of environmental protection, approved by the order of the Ministry of Environment and Natural Resources of 18.12.2003, the public is one or more individuals or legal entities, their associations, organizations or groups operating under current legislation of Ukraine or practice. The basic principle of public participation in decision-making on issues that cause or may cause adverse impact on the environment is access of the public to information for adoption of relevant decisions. The Constitution of Ukraine stipulates that ensuring environmental safety and maintaining environmental balance on the territory of Ukraine is an obligation of the state. Everyone has the right to a safe and healthy environment and is obliged not to harm it. Everyone is guaranteed the right to free access to information on the state of the environment (Articles 16, 50, 66). According to the provisions of Art. 2 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Convention was ratified by the Law No. 832-XIV of July 6, 1999.), the public concerned means the public that is or may be affected by the decision-making process on environmental matters or that has an interest in the process; for the purposes of this definition, non-governmental organizations that contribute to the protection of the environment and meet the requirements of national law are considered to have an interest.

According to the charter of international charitable organization "Environment-People-Law", registered by the Ministry of Justice of Ukraine on March 24, 1999. Certificate №020, the plaintiff is a self-governing, with international status, established on a voluntary basis, a charitable organization that has the right to apply to public and civic bodies, local governments, other legal entities and individuals on issues related to the environment, and violations of the law (p. 2.4.15).

On August 1, 2013, International charitable organization "Environment-People-Law" addressed the State Geology and Minerals Service of Ukraine with a request for public information № 248, in which it requested: to inform whether Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA Ltd had been issued a special subsoil use permit for the implementation of the agreement "On the distribution of hydrocarbons to be extracted within the Yuzivska section between the state of Ukraine and Shell Exploration and Production Ukraine Investment (IV) B.V." and NADRA YUZIVSKA Ltd. If such a permit has been issued, it asked to notify

about the date of its issuance; send a copy of the special subsoil use permit issued to Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA Ltd.

By letter № 9893/12-13 dated 20.08.13, the State Geology and Minerals Service of Ukraine refused to satisfy the request of International charitable organization "Environment-People-Law" on the basis of paragraph 2 part 1 of Art. 22 of the Law of Ukraine "On Access to Public Information", according to which the information controller has the right to refuse the request in the case when the requested information belongs to the information with limited access. According to the defendant's position, the requested information is public information with limited access and qualifies as official.

The court of the first instance rightly determined that in accordance with paragraph 12 of the Procedure for issuing special permits for subsoil use, approved by Resolution of the Cabinet of Ministers of 30.05.11 № 615, the registration number and date of issuance of the permit shall be indicated in the permit as well as grounds for issuing a permit; type of subsoil use; information on the subsoil area provided for use, its name, location, coordinates, area, restrictions on the depth of use and, if necessary, restrictions on the depth of use; type of mineral, its reserves at the time of permit issuance, name of the body that approved (tested) mineral resources; purpose of subsoil use; source of funding for works; special conditions; information about the owner of the permit; information on the approval of the permit; the validity of the permit.

Denying the claim in part of the obligation to issue this permit, the court of the first instance based its judgement on the fact that the special subsoil use permit was issued pursuant to the agreement "On the distribution of hydrocarbons to be extracted within the Yuzovska section between Ukraine and Shell Exploration Production Ukraine Investment (IV) B.V.» and NADRA YUZIVSKA Ltd, and therefore discloses the essence and terms of the contract\ agreement \ "On the distribution of hydrocarbons to be extracted within the Yuzivska section between the state of Ukraine and Shell Exploration and Production Ukraine Investment (IV) B.V." and NADRA YUZIVSKA Ltd, to which the plaintiff is not a party. Therefore, in the opinion of the court of the first instance, this may harm the rights of other people, disclose information received from the parties in confidence. This was substantiated by the Court by the Order of the State Geology and Minerals Service of Ukraine dated 20.03.2013 № 140, which through \ p.2 \ set out a new version of the List of information of the State Geology and Minerals Service of Ukraine, which contains official information owned by the state classified as information "For official use". P. 5.4. of the List was amended to add to the information of the State Geology and Minerals Service of Ukraine, which contains official information owned by the state and classified "For official use", among others, also the information on the terms of the Agreement on distribution of hydrocarbons to be extracted within the Yuzovska section between the State of Ukraine and Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA Ltd, except for provisions containing socially necessary information about the environment.

However, this conclusion was erroneously made by the court of the first instance, not ensuring the completeness of the investigation of all circumstances of the case, in particular, whether such a special permit really contains the essence and conditions of the agreement, and if so, in what part.

The information specified in the special permit does not fall under the restrictions specified in Art. 6 of the Law of Ukraine "On Access to Public Information". In accordance with Part 6 Art. 7 of this law, only information can be of restricted access, not a document. If a document contains restricted information, non-restricted information in the document is released for review. The presence of restricted information in the document is not a ground for refusing to provide a copy of the document.

Moreover, the resolution of the Kyiv Administrative Court of Appeal of 27.05.2014 declared illegal and repealed paragraph 5.4. of the List of information of the State Geology and Minerals Service of Ukraine, which contains official information owned by the state, which is classified as "For official use", approved by the order of the State Geology and Minerals Service of Ukraine #140 of 20.03.2013 "On the organization of work with official information". According to Art. 72 of the Code of Administrative Proceedings of Ukraine, these circumstances are preliminary. Therefore, in this part the court decision is subject to cancellation, and the claim is subject to satisfaction.

In accordance with Part 2 of Art. 19 of the Constitution of Ukraine, public authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine. According to Art. 2 of the Code of Administrative Proceedings of Ukraine, the task of administrative proceedings is to protect the rights, freedoms and interests of individuals, rights and interests of

legal entities in the field of public relations from violations by public authorities, local governments, their officials, other entities in the exercise of their authoritative and managerial functions based on legislation, including the performance of delegated powers. In cases of appeal against decisions, actions or omissions of subjects of power, administrative courts shall verify whether they have been adopted (committed): 1) on the basis of, within the powers and in the manner prescribed by the Constitution and laws of Ukraine; 2) using the authority for the purpose for which this authority was granted; 3) substantiated, ie taking into account all the circumstances relevant to the decision (action); 4) impartially; 5) in good faith; 6) prudently; 7) in compliance with the principle of equality before the law, preventing unfair discrimination; 8) in proportion, in particular with observance of the necessary balance between any adverse consequences for the rights, freedoms and interests of the person and the purposes at achievement of which this decision (action) is directed; 9) taking into account the person's right to participate in the decision-making process; 10) in a timely manner, ie within a reasonable time.

At the same time, the court of the first instance rightly satisfied the rest of the claims and decided to declare illegal the refusal of the State Geology and Minerals of Ukraine of 20.08.2013 № 9893 \ 03 \ 12- \ 3 regarding the refusal to provide information on the issuance to Shell Exploration and Production Ukraine Investment (IV) B.V. » and NADRA YUZIVSKA Ltd of a special subsoil use permit within the Yuzivska section, between the state of Ukraine and Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA LLC, as well as information on the date of issuance of this permit. At the same time, the parties did not appeal the conclusion of the court of the first instance.

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Court of Appeal, -

ruled:

To satisfy the appeal of International Charitable Organization "Environment-People-Law".

To cancel the decision of the Lviv District Administrative Court of 28.10.2013 in case №813 / 7397/13-a and to adopt a new decision to satisfy the administrative claim.

To declare illegal the refusal of the State Geology and Minerals Service of Ukraine of August 20, 2013 №9893 / 03/12-/3 regarding the refusal to provide information on the issuance to Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA Ltd of a special subsoil use permit within the Yuzivska section between the State of Ukraine, Shell Exploration and Production Ukraine Investment (IV) B.V. and NADRA YUZIVSKA Ltd, as well as information on the date of issuance of this permit.

To oblige the State Geology and Minerals Service of Ukraine to provide International Charitable Organization "Environment-People-Law" with a copy of the special subsoil use permit for the implementation of the agreement "On distribution of hydrocarbons to be extracted within the Yuzovska section" between the State of Ukraine, Shell Exploration and Production Ukraine Investment (IV) B.V. » and NADRA YUZIVSKA Ltd.

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The decision enters into force immediately after the proclamation and may be appealed in cassation directly to the Supreme Administrative Court of Ukraine within 20 days after its entry into force, and in the event of its drafting in accordance with Part 3 of Art. 160 of the Code of Administrative Proceedings of Ukraine, within the same period from the time of its completion.

Presiding Judge