

CIVIL JUDGMENT No 620 of 17 FEBRUARY 2014
- ILFOV COURT CIVIL SECTION (Case No 3940/93/2013)

Pages 5 and 6:

The case was registered at the Ilfov Court on 18.11.2013 under no. 3940/93/2013.

At the trial date of 10.02.2014, the court rejected as unfounded the objections raised by the defendants in the statement of defence, namely the exception of prematurity for failure to comply with the preliminary procedure, lack of interest and lack of subject matter, for the reasons set out in the closing judgment.

The parties were authorised to submit written evidence in the case.

Having analysed all the evidence adduced in the case, the Court finds as follows:

In fact, by Decision ITRSV RM. Vâlcea no.122/22.10.2012 was ordered the definitive removal from the forest circuit of the area of 0.0540 ha, property of the defendant Complexul Energetic Oltenia, and the clearing of the related forest vegetation for the implementation of the objective "Expansion of the lignite quarry Pinoasa".

From the content of the contested decision, it appears that the basis for taking that measure was the exploitation licence issued by ANRM, the notice for public consultation, the environmental agreement No GJ/15.03.2011 issued by APM Gorj, the supporting memorandum, the topographical survey, the favourable opinion of the Tg. Jiu, the owner's agreement, the technical file of transmission-cooling including the payment of the final removal fee (documents also on file).

According to Article 14 of Law No 554/2004 on administrative litigation, in well-justified cases and in order to prevent imminent damage, after having referred the matter to the public authority which issued the act or to the hierarchically superior authority in accordance with Article 7 of the same law, the injured party may request the competent court to order the suspension of the execution of the unilateral administrative act, until the court has ruled on the merits.

According to art.2 paragraph 1 letter t of Law no.554/2004, well justified cases are circumstances related to the state of facts and law, which are likely to create a serious doubt as to the legality of the administrative act, and according to letter ş imminent damage is the future and foreseeable material damage or, as the case may be, the serious disruption of the functioning of a public authorization or a public service.

The Court finds that there is no doubt as to the legality of the decision because: the area removed from the forest circuit is less than 1 ha, which entails the competence of the territorial inspectorates to approve it under Article 40(a) of Law 46/2008; proof of public consultation has been provided; the Oltenia Energy Complex has held a licence for the exploitation of lignite mineral resources in the Pinoasa perimeter since 2008; the environmental agreement mentioned in the decision has not been annulled in administrative proceedings; the provisions of Article 3 are not applicable to the construction permit. paragraph 1 letter e of Law no. 50/1991, but the special provisions contained in GD no. 445/2009, which in Article 2 letter b letter (i) specifies that the development approval represented by the decision of the competent

authority or authorities, entitles the project holder to carry out the project; this is materialized in: (i) the construction permit, for the projects listed in Annex no. 1 (the project of the respondent falling under item 19 of Annex 1).

The other aspects invoked by the complainant, namely that the lignite quarry project involves in fact the clearing of more than 150 ha of forest, that the respondent Complex proceeded to slice the project and carry out environmental assessments on the pieces in violation of the internal rules on the matter, but the practice established by the decisions of the European Court of Justice cannot be received and analysed in the summary procedure regulated by Article 14 of Law 554/2004 as it would mean a prejudice of the merits of the action for annulment of the administrative act. Similarly, it cannot be verified through the present action whether the public consultation procedure complied with the Aarhus Convention to which Romania acceded by Law no.86/2000.

Moreover, the High Court of Cassation and Justice has consistently ruled that in the context of an application for suspension it is not possible to open the merits. Thus, by Decision no.4587/06.10.2011, the ICCJ held that in order to establish a well-founded and justified case requiring the suspension of an administrative act, the court must not proceed to analyse the criticisms of illegality on which the request for annulment of the administrative act is based, but must limit its examination only to those circumstances of fact and/or law which are capable of producing a serious doubt on the presumption of legality enjoyed by an administrative act.

In conclusion, the Court finds that the requirement of a well-founded case is not met, since a summary examination of the arguments put forward by the applicant in the light of the relevant legal provisions shows that they are not such as to create a serious doubt as to the legality of the contested act.

With regard to the occurrence of imminent damage, the court finds in fact that the area has already been cleared and excavated (according to the defendant's submissions in the statement of defence and the documents submitted in support - the contract of execution and its annexes), and the applicant has not proved that it has brought an action for annulment of the contested decision.

The applicant's mere assertion that a lignite quarry is a project with a major negative impact on the environment does not prove the imminence of damage, given that the administrative act enjoys a presumption of legality and truthfulness and the suspension of its execution is an exceptional situation which occurs when the law provides for it, within the limits and conditions specifically regulated.

In view of the reasons set out above, the court finds that the requirements laid down cumulatively in Article 14 of Law 554/2004 are not met, and will therefore dismiss the application as unfounded.

It should be noted that the defendant SC Complexul Energetic Oltenia SA has reserved the right to request separate legal costs.

FOR THESE REASONS,
IN THE NAME OF THE LAW
RESOLVES:

Dismisses the claim formulated by the applicant BANKWATCH ROMANIA ASSOCIATION with registered office in sector 1, Bucharest, Bd. Dinicu Golescu, nr. 41, bl. 6, sc. 1, et. 1, ap. 5 in contradiction with the defendant ITRSV RM. VÂLCEA, established in Rm. Valcea, Carol I, nr. 37, County of Valcea, SC COMPLEXUL ENERGETIC OLTENIA SA with registered office in Targu-Jiu, Alexandru Ioan Cuza, nr. 5, County of Gorj as unfounded.

Take note that the defendant SC Complexul Energetic Oltenia SA has reserved the right to claim separate legal costs.

With appeal in 5 days from the communication.

Delivered in public sitting, today 17.02.2014.

President,

Alina Dumitrescu

Registrar,

Marioara Rusu

Redacted by. D.A/5ex/28.03.2014

Tehnored M.R