CIVIL JUDGMENT No 622 of 17 FEBRUARY 2014 –

ILFOV COURT CIVIL SECTION (Case No 4070/93/2013)

Pages 5 to 7:

The plaintiff did not indicate facts or circumstances likely to create a serious doubt as to the legality of the administrative acts, the court could assess that the condition "well justified case" is not met because the issuance of the decisions was made with the fulfilment of the legal conditions;

With regard to the second condition of imminent damage, based on the definition given by Article 2(1)(5) of Law 554/204, the court may hold that it consists of future and foreseeable material damage, finding that this condition has not been proven.

As regards the fulfilment of the condition of imminent damage, the court can find that the plaintiff does not support any argument in this regard.

The plaintiff has not provided any evidence that would convince the court of the imminence of material damage that is difficult or impossible to remove subsequently, so as to be within the exceptional nature of the suspension of the execution of the administrative act, according to the nature of the law currently in force that confers this legal institution.

The bad faith of the plaintiff can also be ascertained, who challenged in court at the Bucharest Tribunal almost 100 decisions of removal from the forest fund issued by our institution in 2012 for SC Complexul Energetic Oltenia Sa - Divizia Miniera Gorj.

In law, the complaint is based on all the legal provisions cited in its contents.

In the evidence, the defendant requests the production of documents and any other evidence will prove to be useful during the proceedings.

By civil judgment no.4324/18.09.2013, pronounced in case no.23826/3/2013 by the Bucharest Court, it was ordered to decline jurisdiction to resolve the present case in favour of the Ilfov Court.

The case was registered with the Ilfov Court on 26.11.2013 under no.4070/93/2013.

At the trial date of 10.02.2014, the court rejected as unfounded the objections raised by the defendants in their 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 stated in the closing judgment.

The parties were granted leave to submit written evidence in the case.

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

In fact, by decisions issued by ITRSV RM. Vâlcea under no.7/07.02.2011, no.18/20.03.2012, no.25/09.04.2013, no.23/08.04.2013, no.21/05.04.2013, no.68/26.06.2012, no.55/28.05.2013, no.48/16.05.2012, no.46/15.05.2012, no.30/22.03.2012, no.103/19.09.2012 and no.122 /22.10.2012, it was ordered the definitive removal from the forest circuit and deforestation of areas of land of less than 1 ha each, owned by Complexul Energetic Oltenia, in order to carry

out the objectives "Expansion of the Valea Știucani - Roșiuța quarry tailings pond" and "Expansion of the Roșiuța lignite quarry".

It is clear from the contested decisions that the basis for the adoption of those measures was Decision No 1678/2006 on the declaration of public utility for the work of national interest 'Opening and putting into operation of the Rosiuta quarry, Rosiuta county, Romania'. Gorj, respectively HG nr.1294 /2007 granting the licence for the exploitation of lignite in the Rosiuta I perimeter; the announcement for public consultation, the environmental agreements no.GJ-19/2011, no.GJ-20/2011, no.GJ-22/2007, no.GJ-18/2011 issued by APM Gorj (objective below), the justification memorandum, the topographical survey, the favourable opinion of the Motru forestry office, the owner's agreement, the technical file for transmission and cooling, including payment of the final extraction fee (documents also on file).

According to Article 14 of Law 554/2004 on Administrative Litigation, in well-justified cases and for the prevention of imminent damage, after having referred the matter to the public authority that issued the act or to the hierarchically superior authority, in accordance with Article 7 of the same normative act, the injured party may request the competent court to order the suspension of the execution of the unilateral administrative act, until the court of first instance has given its decision.

According to Article 2, paragraph 1, letter t of Law no. 554/2004, 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 s, 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 decisions at issue in the present case since: the area removed from the forestry circuit by each decision is less than 1 ha, which entails the approval competence of the territorial inspectorates pursuant to Article 40(a) of Law 46/2008; proof of public consultation has been provided; the Rosiuta quarry has been declared a work of public utility of national interest by government decision since 2006; the environmental agreement mentioned in the decision has not been annulled in the administrative proceedings; the provisions of Article 3 of Law 46/2008 do not apply to the construction permit. paragraph 1 letter e of Law no.50/1991 but the special provisions contained in GD no.445/2009 which at art.2 letter b letter (i) specifies that the development approval represented by the decision of the competent authority or authorities, gives the right to the project holder to carry out the project; this is materialized in: (i) the construction permit, for the projects provided for in Annex no. 1 (the project of the respondent falling under item 19 of Annex 1).

The other aspects invoked by the applicant, namely that the lignite quarry project involves the deforestation of 4,8309 ha of forest, that the defendant Complex proceeded to slice the project and carry out environmental assessments on the pieces in violation of the internal rules on the matter, as well as the practice established by the decisions of the European Court of Justice, cannot be received and analysed in the summary procedure governed by Article 14 of Law 554/2004 as it would mean prejudging 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.

The High Court of Cassation and Justice has consistently ruled that it is not possible in the context of an application for a stay of proceedings to open the case on 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 manifest circumstances of fact and/or of 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 areas have 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), that it is a question of the extension of the existing quarry and that 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 the 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 under the conditions specifically regulated.

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

It is to 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 plaintiff BANKWATCH ROMÂNIA 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 seek separate legal costs.

With appeal in 5 days from the communication.

Delivered in public sitting, today 17.02.2014.

President,

Alina Dumitrescu

Registrer,

Marioara Rusu

Redacted by. D.A/5ex/28.03.2014

Tehnored M.R