

**CIVIL JUDGMENT No 888 of 10 MARCH 2014**  
**ILFOV COURT CIVIL SECTION (Case No 343/93/2014)**

Pages 4 to 6:

Before issuing the contested decisions, our institution carried out its own public consultation, notifying in this regard the Dragutesti Town Hall, Gorj County, on whose administrative radius the investment objective is located, of the public consultations that took place at the premises of our institution.

The plaintiff did not indicate facts or circumstances likely to create a serious doubt as to the legality of the administrative acts, the court being able to assess that the condition of "well justified case" was not met because the issuing 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 554/2004, 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.3897/03.09.2013, pronounced by the Bucharest Court in case no.23819/3/2013, the exception of lack of territorial jurisdiction of the Bucharest Court was admitted and the jurisdiction to resolve the present case was declined in favour of the Ilfov Court.

The case was registered with the Ilfov Tribunal on 06.02.2014 under no.343/93/2014.

At the trial date of 10.03.2014, the court rejected as unfounded the objections raised by the defendants, 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 practice.

In the case, the parties were granted leave to produce and administered the evidence of the documents submitted by them.

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

In fact, by Decision ITRSV RM. Vâlcea no.5/07.02.2012 was ordered the definitive removal from the forest circuit of the area of 0.4925 ha, the property of Complexului Energetic Rovinari, and the clearing of the related forest vegetation for the implementation of the objective "Extension of the Tismana II lignite mining quarry".

The contested decision states that the basis for the adoption of that measure was the exploitation licence issued by ANRM and approved by GD no. 328/18.03.2004, the notice for public consultation, the environmental agreement no. GJ/37/29.08.2005 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 the transmission-cooling including the payment of the final removal fee (documents submitted with the 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 decision since: 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; Complexul Energetic Oltenia has held a licence for the exploitation of lignite mineral resources in the Tismana II perimeter since 2004; 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 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 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 59 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 10.03.2014.

President,  
Alina Dumitrescu

Registrar,  
Marioara Rusu

Redacted by. D.A/5ex/red 02.04.2014

Tehnored M.R