CIVIL JUDGMENT No. 3469 of 14.06.2013

- BUCHAREST COURT -

Section IX-A - Administrative and Fiscal Litigation (Case No. 17632/3/2013)

The last 3 pages:

……extension of a coal mine without analysing the impact of the extension of the quarry, no provision for compensation measures for the deforestation works, no planning certificate, no environmental impact assessment report, no analysis of the cumulative effects of the project with other deforestation projects in the same area, the effects on the health of the population, on water and on protected sites and species, and violation of the provisions of the Aarhus Convention by not ensuring publicity of the documentation. As regards the imminent damage, they pointed out that the deforestation would result in the construction of a lignite quarry without legal development consent.

In law, they invoked the provisions of HG No 445/2009, Law No 554/2004.

The defendant Gorj Environmental Protection Agency filed a statement of defence, in which it requested that the application be rejected as unfounded, on the grounds that all the relevant legal provisions had been complied with when the environmental consent was issued.

SC COMPLEXUL ENERGETIC OLTENIA SA - EXPLOATAREA MINIERĂ DE CARIERĂ ROVINARI also requested in its application that the suspension request be rejected as unfounded, as the conditions of Article 14 of Law 554/2004 were not met.

Copies of the environmental agreement and the documentation on which it was based, proof of completion of the prior procedure and court practice were submitted to the file.

Having analysed the documents and the file, the Court finds as follows:

On 19.11.2012, the Gorj Environmental Protection Agency issued environmental consent no. GJ-17 for the project DEFINITIVE REMOVAL FROM THE FOREST LAND OF 66.50 HA OF WHICH 58.9586 HA ARE FOREST LAND EXTENDED WITHIN THE FRAMEWORK OF THE TÂRGU JIU FOREST OCOL, UP I STRÂMBA, FOR THE CONTINUATION OF LIGNITE EXTRACTION WORKS WITHIN THE TISMANA I EXPLOITATION PERIMETER - ROVINARI MINING EXPLOITATION - files 57-63.

According to Article 14 of Law 554/2004, in well-justified cases and in order to prevent imminent damage, after the referral to the public authority that issued the act or to the hierarchical superior authority, the injured party may request the competent court to order the suspension of the execution of the unilateral administrative act until the decision of the court on the merits.

It therefore follows that for the suspension of an administrative act, which is a measure ordered in exceptional cases, two conditions must be met cumulatively: the existence of a well-justified case and the need for suspension to prevent imminent damage.

The plaintiffs invoked the existence of a well-justified case arguing that the administrative act whose suspension is requested is not based on all the necessary documentation, but the court considers that the requirement of the existence of a well-justified case, as defined by Article 2 letter t of Law 554/2004, i.e. a circumstance related to the factual and legal situation, which is likely to create a serious doubt as to the legality of the administrative act, is not fulfilled.

The issue of the documents submitted by the applicant to obtain environmental consent cannot be dealt with in an application for a stay of proceedings, as these issues will have to be examined when the merits of the case are decided. The issues relating to the opening of a new quarry or the extension of an existing quarry on

the basis of a 1983 permit require a detailed examination of the applicable legal provisions and the taking of evidence in the substantive action for annulment of the act.

Furthermore, a mere challenge to the method of environmental impact assessment is not sufficient to give rise to serious doubt as to the legality of the measure whose suspension is sought, and evidence must be adduced on that point.

The documentation on the basis of which the opinion was issued was submitted to the case file, and several checks and studies were carried out, including an environmental impact study - file 232 et seq., in which the effects on water, air, soil, protected species or human communities are analysed. In the context of an application for suspension, it is not possible to establish how well founded those conclusions are, since the applicants' claims concerning the lack of appropriate assessments will have to be proved, including by scientific means, by means of an action for annulment.

At the same time, evidence of the submission of the project for public consultation has been submitted to the case file, with notices being published on the internet, in the written press or at the offices of local public institutions, so that no appearance of lack of transparency can be imputed to the applicant.

The 13 pages of the agreement contain a detailed description of the project, the documents on which it was based, the stages completed, the reasons for issuing the agreement and the measures required to maintain it.

Therefore, in this case, there is no obvious ground of illegality, as the fault of the issuing authority is not clear, in order for serious doubts to be retained, but only by the administration of evidence on the facts in the case file, the legality of the issuing of the environmental agreement will be assessed.

On the other hand, in order for the suspension of the act to be pronounced, the condition of imminent damage must also be met, as the mere challenge by the plaintiffs of the legality of the issuance of the administrative act cannot justify the suspension of enforcement under Article 14 of Law 554/2004.

As regards the condition of imminent damage, the Court finds that the applicants have not proved that the condition of imminent damage, as defined in Article 2(s) of Law No 554/2004, as future and foreseeable material damage or, as the case may be, serious foreseeable disruption of the functioning of a public authority or public service, is fulfilled.

The plaintiffs do not prove the imminence of damage, as they have shown that the damage to the environment has not been properly analysed, since after the clearing of the forest a new lignite quarry will be built without a proper development act.

According to Article 11(1) of GEO 195/2005, environmental consent must be requested and obtained for public or private projects or for the modification or extension of existing activities which may have a significant impact on the environment.

According to Article 2, paragraph 3 of the same act, the environmental agreement is the administrative act issued by the competent authority for environmental protection, which sets out the conditions and, where appropriate, measures for environmental protection, which must be respected in the case of implementation of a project.

The combination of these legal provisions shows that obtaining the environmental consent is a stage in the implementation of a project, being the act imposing on the proposed intervention conditions and measures arising from the need to protect the environment.

The issue of the environmental consent is therefore prior to the issue of other administrative acts which can be effectively executed. In practice, the applicants base their claim on the risk of further development of a lignite quarry in that area, but their request for suspension of the implementation of the environmental agreement cannot be justified by the harmful effects of other acts which would ensure the actual implementation of the project covered by the environmental agreement.

Not even the imminence of the actual clearing of the forest vegetation could be invoked in this case, given that the clearing is not carried out on the basis of the environmental consent, since administrative acts must be issued by the Territorial Forestry and Hunting Inspectorate. Moreover, in the environmental agreement - page 62 verso - it is stated that the clearing of forest vegetation is carried out only after approval of the documentation, quantitative and qualitative assessment of the standing timber, approval of the act of development and issue of the logging permit.

Therefore, the court considers that the measure of suspension of the environmental agreement is not necessary, as the conditions of Article 14 of Law 554/2004 are not met, and therefore the application for suspension is unfounded and will be rejected.

FOR THESE REASONS

IN THE NAME OF THE LAW

RESOLVES

Dismisses as unfounded the application lodged by the applicants GREENPEACE CEE ROMANIA, established in Bucharest, Sector 2, Str. Ing. Vasile Cristescu nr.18, and ASOCIAȚIA BANKWATCH ROMÂNIA, established in Bucharest, Sector 1, B-dul Dinicu Golescu nr.41, Bl.6, Sc.1, Et.1, Ap.5, in contradiction with the defendants AGENȚIA DE PROTECȚIE A MEDIULUI GORJ, established in Tg. Jiu, Str. Unirii nr.76, Gorj County, and SC COMPLEXUL ENERGETIC OLTENIA SA - SDM TG-JIU - EXPLOATAREA MINIERĂ DE CARIERĂ ROVINARI, established in Tg. Jiu, Str. Alexandru Ioan Cuza nr.5, Gorj County.

With appeal within 5 days of notification.

Pronounced in public sitting, today 14.06.2013.

PRESIDENT	REGISTRER
CRISTINA ILINA	ELENA SIMA

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