CIVIL JUDGMENT No. 3532 of 25 NOVEMBER 2013

ILFOV COURT CIVIL SECTION (Case No. 3512/93/2013)

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…….mining for the maintenance of coal capacity at the Gârla Quarry, obtained on the date of commencement of the works and valid for the entire duration of the activity.

The defendant also pointed out that the right to use the land required for mining activities within the mining perimeter is acquired, in accordance with Article 6 of Mining Law No 85/2003, by sale-purchase of land, exchange of land, lease of land, etc. In those circumstances, where there are several owners of land within the license perimeter, it is impossible to acquire all the land to be affected at the same time and from all the owners.

The same aspect, of the gradual expansion of the lignite quarry, also has a technical explanation, since the occupation of the land by removing it from the forest floor is carried out in stages, in portions, as the working fronts advance, within the mining perimeter, delimited by STEREO 70 coordinates, in strict accordance with the working technology for lignite quarries.

It also stated that the public had been informed of the decisions challenged by the applicant.

The decisions challenged by the applicant were issued on the basis of the Methodology for establishing the value equivalence of land and calculating the monetary obligations for the permanent removal or temporary occupation of land from the national forest fund, once by Order No. M.M.P. No. 924/2011, the provisions of Articles 19 and 35 of this normative act being fully respected.

As regards the condition of imminent damage, the applicant has not proved that it is satisfied, the mere challenge by the applicant to the legality of the acts not being sufficient to satisfy the requirement laid down in Article 14 of Law No 554/2004.

In law, the statement of defence was based on Article 205 of the New Code of Civil Procedure.

By civil judgment no.4437/25.09.2013, delivered in case no.23829/3/2013 of 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 09.10.2013 under no.3512/93/2013.

At the trial date of 11.11.2013, the court rejected as unfounded the objections of prematurity for failure to comply with the preliminary procedure, lack of interest and lack of subject matter as unfounded for the reasons set out in the judgment of that date.

At the request of the parties, written evidence was taken.

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.104/20.09.2012, no.100/18.09.2012, no.102/19.09.2012, no.4/30.01.2013, no.98/13.09.2012, no.96/12.09.2012, no.125/12.11.2012, no.128 /26.11.2012, No.50/17.05.2012, No.126/19.11.2012, No.133/19.12.2012, No.130/13.12.2012, No.63/01.06.2012, No.61/31.05.2012, No.58/30.05.2012, No.54/28.05.2012, No.47 /16.05.2012, no.44/15.05.2012 and no.35/10.04.2012, it was ordered the definitive removal from forestry and the clearing of areas of land under 1 ha each, owned by the defendant Complexul Energetic Oltenia, in order to achieve the objective "Expansion of the Jilt Nord lignite quarry".

From the content of the contested decisions, it appears that the basis for taking these measures was the exploitation license issued by ANRM approved by GD no.1647/2008; the notice for public consultation, the environmental agreements issued by APM Gorj (objective below), 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 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 which are the subject of the present case since: the area removed from the forest circuit by each decision is less than 1 ha, which entails the competence of the territorial inspectorates to approve them in accordance with Article 40(a) of Law No 46. /2008; proof of public consultation has been provided; Completul Energetic Oltenia has held a licence for the exploitation of lignite mineral resources in the Jilt Nord perimeter since 2008; environmental agreements No GJ-22/29.01.2007; GJ-23/24.01.2011, GJ-10/25.06.2008 and GJ-3/29.01.2008 referred to in the decisions have not been annulled in the administrative proceedings; the provisions of Article 3 of the Law No L 46/1998 do not apply to the building 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 building 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 11.2126 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 No 554/2004 as it would mean prejudicing 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 in the context of an application for suspension it is not possible 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 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 in Article 14 of Law 554/2004 are not met, and consequently rejects 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
RESOLVED:

Dismisses the application filed by the applicant 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 defendants ITRSV RM. VÂLCEA RM. VALCEA, established in the Carol I file, no. 37, Vâlcea county, SC COMPLEXUL ENERGETIC OLTENIA SA, established in Târgu-Jiu, Alexandru Ioan Cuza, no. 5, GORJ county, as unfounded.

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

With appeal within 5 days from the communication.

Delivered in open court, today 25.11.2013.

President,

Alina Dumitrescu

Registrer,

Marioara Rusu

Editor. D.A

Tehnored M.R/5ex