CIVIL DECISION No 5820 of 8 August 2014

- BUCUREȘTI COURT OF APPEAL –

SECTION VIII-A ADMINISTRATIVE AND FISCAL CAST (Case No 4070/93/2013)

Pages 11 to 15:

As can be seen from the provisions of Article 19 paragraph (1) 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, approved by Order No. M.M.P. No. 924/2011, the construction permit is not required as part of the documentation necessary for the issuance of approval for the permanent removal of land from the national forest fund.

However, for a correct assessment of the legality of our activity, it mentions that it holds the Authorisation for the execution of works no. 81/1983, issued by the People's Council of Gorj County, (attached hereto), for the purpose of executing mining works to maintain coal capacity at the Tismana I Quarry obtained at the date of commencement of the works and valid for the entire duration of execution 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 the 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 licence perimeter, it is impossible to acquire all the areas to be affected at the same time and from all the owners.

There is also a technical explanation for the gradual expansion of the lignite quarry, since the land is occupied by removing it from the forestry base in stages, in sections, 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 for 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.

Having analysed the documents and the file, the Court will dismiss the appeal as unfounded, for the following reasons:

According to Article 14 para. (1) of Law No. 554/2004 on administrative litigation, in well-justified cases and to prevent 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, the injured party may request the competent court to order the suspension of the execution of the unilateral administrative act (...).

It follows from an analysis of the above-mentioned provisions that, in order to be able to order the suspension of the execution of the administrative act, it is necessary to meet, cumulatively, the two requirements: 'well-justified case' and 'prevention of imminent damage', as defined in Article 2(2) of the Regulation. 1(s) and (t) of Law 554/2004 republished.

According to Article 2(t) of the law, a well-justified case refers to "circumstances relating to the state of facts or law which are such as to create a serious doubt as to the legality of the administrative act", and according to Article 2(t) of the law, a well-justified case refers to "circumstances relating to the state of facts or law which are such as to create a serious doubt as to the legality of the administrative act". (s) of the same act, imminent damage consists of "foreseeable future material damage or, as the case may be, foreseeable serious disruption of the functioning of a public authority or a public service".

The provisions of Article 14 of Law No 554/2004 are the transposition into national law of the provisions, as a matter of principle, contained in Recommendation R (89)8/13.09.1989 of the Committee of Ministers of the Council of Europe on interim judicial protection in administrative matters, according to which "in deciding whether to grant interim protection to the applicant, the court must take into account all relevant factors and interests. Provisional protection measures may be granted in particular if the execution of the administrative act is likely to cause serious damage which can be remedied only with difficulty, and provided that there is a prima facie case against the validity of the act in question."

From the analysis of the above-mentioned regulation, it appears that the suspension of the execution of the administrative act is an exceptional situation, the court having only the possibility to carry out a summary investigation of the appearance of the right, since in the procedure provided by law for the suspension of the execution of the administrative act, the substance of the dispute cannot be prejudged.

In the light of the general reasoning set out above and the facts of the case before the court, the Court holds that the court of first instance was right to dismiss the application as unfounded, since the conditions laid down in Article 14 of Law No 554/2004 were not met in order to order the suspension of the contested administrative acts.

Thus, having briefly verified the apparent legality of the contested acts, the Court finds that the decisions whose suspension is requested were issued on the basis of the following documents, copies of which are also on file in the case: the operating licence approved by GD no. 1294 /2007; the notice for public consultation, environmental agreements GJ 18, 19 and 20 of 2011 and 22/2007 issued by APM Gorj (objective below), the supporting memorandum, the topographical survey, the favourable opinion of the Motru forestry office, the owner's agreement, the technical file of transmission-cooling including the payment of the final removal fee (documents also filed in the case file).

In the light of that situation, the Court considers, as did the first instance, that the condition of the existence of a well-founded case is not satisfied in the present case, since the issues raised by the appellant-appellant in the application for suspension are not those of manifest unlawfulness, but those which require an examination of the substance of the dispute.

Thus, the aspect relating to the lack of jurisdiction of the defendant ITRSV Rm. Vâlcea, to issue the contested acts, by the unjustified division of the areas, in order not to apply the provisions of Article 40(b) of Law 46/1998, cannot be established by a summary analysis of the case, but requires the administration of evidence and an analysis of their merits, there being an appearance of legality of the acts in the circumstances in which they are issued on an area of less than 1 ha each, for which the provisions invoked by the appellant-claimant are not applicable.

In addition, for the analysis of the plea relating to the lack of public participation in the decision, evidence must be adduced and an analysis of the merits of the case must be carried out, given that the defendant claims that it consulted the public and submits in that regard the addresses issued for the procedure in question.

Therefore, at this stage of the proceedings, the applicant's claim that the contested decision was issued without public participation is not such as to create serious doubt as to the legality of the decision, since the defendant claims that it carried out such a consultation and submits evidence to that effect, and it is for the court to examine whether or not the manner in which the defendant authority proceeded complies with the provisions of the Convention ratified by Law 86/2000 or Law 52/2003.

The Court also holds that the first instance lawfully held that there is no serious doubt as to the legality of the decisions at issue in the present case since Completul Energetic Oltenia has held the license for the exploitation of lignite mineral resources in the Roșiuța I perimeter since 2007; the environmental agreements mentioned in the decisions have not been annulled in administrative proceedings; and the provisions of Article 3 paragraph 1 letter e of Law no.50/1991 do not apply to the construction permit, but to the special provisions contained in GD no.445/2009 which in Article 2 letter b letter e of Law no.50/1991. (i) specifies that the development approval represented by the decision of the competent authority or authorities, entitles the project owner to carry out the project; this is materialized in: (i) the building permit, for the projects listed in Annex no. 1 (the project of the parish falling under item 19 of Annex 1).

As regards compliance with the provisions of GD no. 445/2009 on environmental impact assessment and the illegality of the environmental agreement, these are also issues whose apparent soundness cannot be established by a summary analysis of the case, but require substantive assessments, which cannot be made in the procedure for suspending the execution of an administrative act.

Next, the Court notes, at least formally, without analysing the appellant-appellant's claims in their entirety, that, first of all, it is not a question of building a new lignite quarry or a new project, as the appellant-appellant claims, but, as is clear from the content of the acts whose suspension was requested, within the mining perimeter approved by H. G. No 328/2004, works are to be carried out to extend the Roșiuța quarry and the Valea Știucani - Roșiuța quarry tailings pond in order to maintain the production and mining capacity of the coal;

The contested decisions were issued for the definitive removal from the national forestry fund of the land in the area indicated in those documents, with a view to the realisation of the objective 'Extension of the Roșiuța lignite quarry' and 'Extension of the Valea Știucani - Roșiuța quarry tailings pond', on the basis of a complete documentation, of which the

Environmental Agreements No GJ 18, 19 and 20 of 2011 and 22/2007, issued by the Gorj Environmental Protection Agency, are part.

The Environmental Agreement sets out the conditions and, where appropriate, measures for the protection of the environment, being the act which imposes on the proposed intervention, conditions and measures arising from the need to protect the environment in the context of the implementation of a project. There is an environmental agreement for the contested decisions, and it is mentioned in each decision, so that the applicant's allegations that there is no such agreement are untrue.

At the same time, from the formal analysis of these agreements attached to the case file, the Court notes that they were aimed at the purpose of the deforestation, namely the expansion of the lignite mining quarry, and not exclusively for the definitive removal of the land from the national forest.

Moreover, it follows from an analysis of the provisions of Article 19(1) of the Methodology for determining the value equivalence of land and for calculating the financial obligations for the permanent removal or temporary occupation of land from the national forestry fund, approved by Order No 924/2011 of the Minister for the Environment and Public Works, that the building permit is not required as part of the documentation necessary for the issue of approval for the permanent removal of areas of land from the national forestry fund.

Furthermore, the Court holds that the mere contention of the applicant that the defendants have circumvented the competence provided for by the Forestry Code in relation to the issue of such decisions to remove the land in question from the national forestry fund, by artificially fragmenting it to areas of less than the limit of 1 ha, so as to confer competence on the local, and not the central, authorities, is not well founded, at least in formal terms, there is no concrete factual evidence of such an intention, since the land which was the subject of those administrative acts was acquired successively - in that configuration - by the beneficiary of those administrative acts, by means of sale-purchase contracts concluded with separate owners, and there is no evidence of a unitary acquisition of those areas followed by their subsequent artificial fragmentation in order to evade the application of Article 40(b) of Law 46/1998.

As regards the condition of imminent damage, that condition is future and foreseeable material damage or, as the case may be, foreseeable serious disruption of the functioning of a public authority or public service.

From that perspective, the Court finds that the appellant-appellant has not adduced any evidence capable of convincing the court of the imminence of material damage which is difficult or impossible to remove at a later date, so as to be covered by the exceptional nature of the suspension of the execution of the administrative act, in accordance with the legal regime which the law currently in force confers on that legal institution.

At the same time, it is noted that in the case of the request for suspension of the administrative act, the fulfilment of the condition of prevention of imminent damage is not proven and demonstrated by simply claiming that the execution of the act in question leads to the production of damage, as this would lead to the conclusion that this requirement is assumed in most administrative acts in this category, which would contravene the exceptional nature of the institution of suspension of administrative acts in the regulation of Law 554/2004.

In the light of these considerations, the Court finds that the court of first instance lawfully held that the applicant's mere contention 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 constitutes an exceptional situation which intervenes when the law provides for it, within the limits and under the conditions specifically regulated, and consequently rejected the application as unfounded because the cumulative requirements laid down in Article 4(1) of the Regulation have not been met. l-l, of Law no.554 /2004.

Therefore, the Court finds that the Court of First Instance was right to hold that the conditions laid down in Article 14(1)(b) of the EC Treaty were not met in the case in question, in accordance with the correct application of the substantive law. 1 of Law 554/2004, and the decision rendered by the judgment under appeal corresponds to the considerations of fact and law resulting from the establishment of the factual situation resulting from the evidence at first instance, there being a logical connection between the considerations and the operative part, and the ground of appeal provided for in Article 488 para. 6 of the Civil Procedure Code is also unfounded, so that, having regard to the provisions of Article 496 para. 1 of the Code of Civil Procedure and art. 20 of Law no. 554/2004, the appeal lodged by Bankwatch Romania will be dismissed as unfounded.

ON THOSE GROUNDS

IN THE NAME OF THE LAW

DECIDES:

Dismisses the appeal brought by the appellant-appellant Bankwatch Romania Association against the civil judgment no. 622/17.02.2014 delivered by the Ilfov Court - Civil Section in the case no. 4070/93/2013, against the defendants I.T.R.S.V. Râmnicu Vâlcea and S.C. Complexul Energetic Oltenia S.A., as unfounded.

The judgment is final.

Delivered in open court today, 8.08.2014.

PRESIDENT,	JUDGE,	JUDGE,
Georgian Davidoiu	Liviu Eugen Făget	Bogdan Cristea

REGISTRAR,

Ramona Olinici

Red. L.E.F.

Tehnored. R.O./5 ex./

Ilfov Tribunal - judge of the merits: A. Dumitrescu