CIVIL DECISION No. 5821 of 14 August 2014

- BUCUREȘTI COURT OF APPEAL –

SECTION VIII-A ADMINISTRATIVE AND FISCAL DISPUTE (Case No. 3753/93/2013)

Pages 10 to 12:

As regards the environmental consent for the implementation of the project, this act exists, being clearly and explicitly mentioned on the first page (penultimate paragraph) of the decisions whose suspension was requested.

The environmental impact assessment procedure is an integral part of the procedure for issuing development consent and Article 19(2) of Regulation (EC) No. (2) states: the environmental consent shall be attached to the development consent (decision) and shall form an integral part of it.

With reference to the Environmental Agreement no. GJ-17/19.11.2012, the applicant requested the suspension of its execution, the request being rejected by the Bucharest Court by civil sentence no. 3469/14.06.2013 pronounced in case no. 17632/3/2013, final solution by decision no. 313212013 of 14.08.2013, pronounced by the Bucharest Court of Appeal, finding the legality of this document.

The public was informed about the contested Decisions, with a view to the implementation of the investment objective "Extension of the Tismana I lignite mining quarry", being issued by the Territorial Inspectorate of Forestry and Hunting Regime Râmnicu Vâlcea, the following notices for public consultation no. 12467/28.12.2011, 145/06.01.2012, 8/06.01.2012, 1803/05.03.2012, 2433/27.03.2012, 2623/27.03.2012, 13153/1 0.12. 2012, 13117/1 0.12.2012, 13529/19.12.2012, 13673/09.01.2013, 13707/10.01.2013, 46/11.01.2013, 1429/08.02.2013, 1481/11.02.2013, 2733/21.03.2013, 3183/02.04.2013.

Regarding the fulfilment of the legal requirements for the suspension of the contested Decisions, it is pointed out that the requirements of Article 14 of Law No. 554/2004 on Administrative Litigation regarding well-justified cases and prevention of imminent damage are not met in this case.

Examining the judgment under appeal in the light of the criticisms raised and in the light of the documents and the file, the Court holds that the appeal is unfounded for the following reasons:

According to Article 14(1)(b) of the Rules of Procedure (1) of the Law no. 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, 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."

It follows from an analysis of the aforementioned regulation that the suspension of the execution of the administrative act constitutes an exceptional situation, the court having only the possibility of carrying out a summary investigation of the appearance of the right, since in the procedure laid down by law for the suspension of the execution of the administrative act the substance of the dispute cannot be prejudged.

Relating the generic reasoning set out above to the facts of the case before the court, the Court holds that the court of first instance correctly dismissed the application as unfounded, as the conditions provided for in Article 14 of Law No 554/2004 were not met in order to order the suspension of the contested administrative acts.

Thus, briefly verifying 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 submitted in copy and in the case file: the exploitation license issued by ANRM approved by GD no.328/2004; the notice for public consultation, environmental agreements no. GJ-17/19.11.2012, no.GJ-2/12.03.2010 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 transmission-cooling, the payment of the final removal fee.

In view of this situation, the Court considers that the condition of the existence of a well-founded case is not met in the case in question, as the issues raised by the appellant-claimant in the application for suspension are not those of manifest illegality, but those which require an investigation 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 unjustifiably dividing 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 a substantive analysis thereof, there being an appearance of the legality of the acts in so far as they are issued on an area of less than 1 ha each, for which the provisions relied on 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 must be carried out on the merits of the

case, given that the defendant claims that it consulted the public and submits in that regard the addresses issued for the implementation of the procedure in question. Therefore, at this stage of the proceedings, the applicant's assertion 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 to have 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 was right to hold that there is no serious doubt as to the legality of the decisions which are the subject of the present case since Completul Energetic Oltenia has held the license for the exploitation of lignite mineral resources in the Tismana I perimeter since 2004; 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 the special provisions contained in GD no.445/2009 which in art.2 letter b lit. (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.

As regards the condition of imminent damage, this is future and foreseeable material damage or, as the case may be, foreseeable serious disruption of the functioning of a public authority or a public service. In the present case, since the first condition has not been met (that of a well-founded case), it is clearly no longer necessary to analyse the second cumulative condition.

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, so that, having regard also to the provisions of Article 496 para. 1 of the Code of Civil Procedure, it will dismiss the appeal filed by ASOCIAȚIA BANKWATCH ROMÂNIA as unfounded.

FOR THESE REASONS

IN THE NAME OF THE LAW

DECIDES:

Dismisses the appeal filed by the plaintiff BANKWATCH ROMANIA ASSOCIATION against the civil judgment no. 3534/25.11.2013 delivered by the Ilfov Court - Civil Section in case no.

3753/93/2013, against the defendants INSPECTORATULAT TERITORIAL DE REGIM SILVICICU VÂNIA RÂMNICU VÂLCEA and S.C. COMPLEXUL ENERGETIC OLTENIA S.A., as unfounded.

The application is dismissed.

Delivered in open court today, 14.08.2014.

PRESIDENT, JUDGE, JUDGE,

Anamaria Laura Dinescu Liviu Eugen Făget Ramona Maria Vladu

GREFIER,

Ramona Olinici

Red. A.M.D./14.08.2014

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Ilfov Tribunal - judge of the merits: A. Dumitrescu