

SECTION VIII-A ADMINISTRATIVE AND FISCAL CAST (Case No. 343/93/2014)

Pages 6 to 10:

The case was registered with the Ilfov Court 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 in their statement of defence, namely the exception of prematurity for failure to comply with the preliminary procedure, lack of interest and lack of subject matter, for the considerations noted 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 it was ordered the definitive removal from the forest circuit of the area of 0.4925 ha, property of Complexul Energetic Rovinari, and the clearing of the related forest vegetation for the realization 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 approval competence of the territorial inspectorates according to Article 40 letter a of Law 46/2008; proof of public consultation has been provided; Complexul Energetic Oltenia has held a license 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 Complexul Energetic Oltenia 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, the General Court ruled: "Dismisses the claim brought by the applicant BANKWATCH ROMÂNIA ASSOCIATION against the defendant ITRSV RM. VÂLCEA, SC COMPLEXUL ENERGETIC OLTENIA SA as unfounded. Take note that the defendant SC Complexul Energetic Oltenia SA has reserved the right to seek separate legal costs."

The plaintiff appealed against the above civil judgment, arguing, in essence, that the court misapplied the law, in this case there are indications of illegality: the quarry is larger than 1 ha, so the clearing is carried out on an area for which ITRSV has no competence to issue decisions; there is no environmental agreement for the proposed objective, but only for the clearing of the forest; there is no construction permit; there is no evidence of public participation in the decision making with environmental impact. Regarding the imminent damage, it is stated that the impact of a lignite mine is presumed to be major on the environment, being classified as such by HG no. 445/2009.

By way of observations, the respondents requested that the appeal be rejected as unfounded.

In examining the appeal, the Court holds that:

As regards the plea that the appeal is invalid on the ground of failure to state reasons, it must be rejected as unfounded, since the grounds on which the appellant considers the decision of the court of first instance to be unlawful and unreasonable are apparent from the content of the application for appeal.

As regards the merits of the appeal, the Court holds that it is unfounded.

The subject-matter of the dispute on the merits is the application for a stay of proceedings pursuant to Article 8(1)(b) of Regulation (EC) No 44/2001. 14 LCA of the decision of ITRSV RM. Vâlcea no.5/07.02.2012, which ordered the definitive removal from the forest circuit of the area of 0.4925 ha, property of the Rovinari Energy Complex, and the clearing of the related forest vegetation for the implementation of the objective "Extension of the Tismana II lignite quarry".

Thus, as the court correctly held, the contested decision shows that the basis for taking this measure was the exploitation license issued by ANRM and approved by GD no.328/18.03.2004, the public consultation notice, 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 transmission-cooling including the payment of the final removal fee.

As regards the condition of a well-justified case, the considerations of the first instance are legal and well-founded. Thus, the Court of First Instance considers that there is no doubt as to the legality of the decision since the area removed from the forest is less than 1 ha, which entails the approval competence of the territorial inspectorates according to Article 40 letter a of Law 46/2008. The appellant's argument according to which the quarry exceeds this area of 1 ha cannot be retained as a basis for suspending the execution of the disputed act, given that the contested administrative act in dispute strictly and expressly results in an area smaller than that indicated by the appellant, namely 0.49 ha, as mentioned above.

Regarding the environmental agreement, in the light of the provisions of Article 2, paragraph 3 of GEO 195/2005, it is the administrative act issued by the competent authority for environmental protection, which establishes the conditions and measures on environmental protection that must be respected during the implementation of a project. The project defined in art. 2 lit. c of GD no. 445/2009 on the assessment of the impact of certain public and private projects on the environment is the one that includes the intervention concerning the exploitation of mineral resources, and Annex 2 to GD no. 445/2009 provides in item 1 lit. d the mention "or deforestation for the purpose of changing the land use". In this case, the environmental agreement no. GJ/37/29.08.2005 for the project exists and was explicitly mentioned in the decision no. 5/07.07.2012 and was not annulled by the court.

As regards the construction authorization, the court correctly concludes that the administrative act appears to be legal and that in this case we are dealing with a development authorization, and not a construction authorization, according to art. 2 letter b of GD no. 445/2009, and in this case this is represented by the decision of the chief inspector of ITRSV Rm Valcea which gives the right to the holder to carry out the project.

As far as public consultation is concerned, it has been proved, with announcement no. 12466/28.12.2011 having been issued.

Also, as far as the imminent damage is concerned, the conclusions of the court are legal and well-founded given that the area has already been cleared and excavated. The major negative impact on the environment of the project in question cannot only be asserted in a generic way, it must be proven in concrete terms, which was not done in this case.

For all those reasons, the Court dismisses the appeal as unfounded.

FOR THOSE REASONS

IN THE NAME OF THE LAW

DECIDES:

Dismisses the plea of invalidity of the appeal.

Dismisses the appeal brought by the appellant-appellant ASOCIAȚIA BANKWATCH ROMÂNIA with registered office in sector 1, Bucharest, Bd. Dinicu Golescu, nr. 41, bl. 6, sc. 1, et. 1, ap. 888/10.03.2014, pronounced by the Ilfov Court - Civil Section in contradiction with the defendants INSPECTORATULAT TERITORIAL DE REGIM SILVIC ET DE VÂNĂTOARE RM. VÂLCEA with headquarters in Rm. Valcea, Carol I, nr. 37, County of Valcea and SC COMPLEXUL ENERGETIC OLTENIA SA with registered office in Targu-Jiu, Alexandru Ioan Cuza, nr. 5, County of Gorj, as unfounded.

The application is final.

Delivered in open court today, 13.10.2014.

PRESIDENT

FLORESCU CRISTINA MARIA

JUDGE

PETROVICI CRISTINA

JUDGE

GĂINĂ IONUȚ CRISTIAN

REGISTRAR

APOSTOL PETRUȚA

Red. FCM

5 ex./.....

Jud. fond: Alina Dumitrescu/Tribunalul Ilfov