CIVIL DECISION No. 8096 of 03 NOVEMBER 2014

- BUCUREȘTI COURT OF APPEAL -

SECTION VIII-A ADMINISTRATIVE AND FISCAL CAST (Case No. 3512/93/2013)

Pages 5 to 7:

Examining the judgment under appeal in the light of the grounds of appeal put forward, on the basis of the documents on file and the applicable legal provisions, the Court finds that the appeal is unfounded, for the following reasons:

In fact, by the contested decisions on deforestation, the respondent ordered the definitive removal from the forestry circuit and the deforestation of areas of land of less than 1 ha each (a total of 11.2126 ha) for the purpose of achieving the objective of extending the Jilt Nord lignite quarry, and the appellant considered that the aim was the fragmented deforestation of a larger area, in breach of the legal provisions relied on, by applying for a stay of execution.

Suspension of the execution of an administrative act is an operation of temporary interruption of the effects of an administrative act, which intervenes at the request of the interested party or ex officio. It is an exceptional measure, which is justified only if the administrative act contains provisions whose fulfilment would have consequences which would be difficult or impossible to remove if the act were subsequently annulled by a court decision.

Suspension of the execution of the administrative act may be ordered only if the conditions laid down by law are met: the existence of a well-justified case and the need to prevent imminent damage. To these two conditions is added a third, procedural condition, deduced from the logical interpretation of the provision under analysis, namely the condition that the plaintiff must prove that the prior administrative procedure has been initiated. Case law crystallised the content of the "well-justified case" condition prior to the amendment of Law no. 554/2004 by Law no. 262/2007, which introduced, for the first time, the legal definition of the concept in Article 2(1)(t).

The existence of a well-founded case may be considered if the circumstances of the case give rise to a strong and manifest doubt as to the presumption of legality, which is one of the foundations of the enforceability of administrative acts. Other criteria that may be taken into account in identifying a well-founded case are: the actual nature of the measure ordered by the public authority, the subsequent conduct of the addressee of the act, the possible effects on related legal relationships.

Imminent damage is defined in Article 2(1)(s) as foreseeable future material damage or, where appropriate, foreseeable serious disruption of the functioning of a public authority or a public service. The analysis of the fulfilment of the conditions imposed by Article 14 of Law no. 554/2004 requires only a summary examination of the appearance of the right, since in the procedure provided for by law for the suspension of the execution of the administrative act the substance of the dispute cannot be prejudged.

In the recitals of its decision No 257 of 14 March 2006, published in the Official Gazette No 366 of 26 April 2006, the Constitutional Court held, in essence, that the suspension of administrative acts may be ordered only under the conditions expressly provided for by law and is an

exceptional situation, since they enjoy the presumption of legality. It also held that "the parties benefit from all the guarantees of a fair trial, including in the determination of the application for suspension of administrative acts and the appeal against the decision to suspend such acts", within the meaning of Article 21(1) of the Constitution. 1 and 2 of the Basic Law.

By judgment of 19 June 1990 in The Queen v. Secretary of State for Transport, ex parte: Factortame LTD and Others, in deciding an application under Article 177 of the EEC Treaty by the House of Lords for a preliminary ruling on the interpretation of Community law relating to the power of national courts to order interim measures where rights recognised by Community rules are at stake, the Court held that Community law must be interpreted as meaning that a national court which, when seised of a dispute concerning Community law, considers that the only obstacle preventing it from ordering interim measures is a rule of national law must disapply that rule. In that regard, the Court has held that it is incumbent on the national courts to ensure the legal protection which flows for individuals from the direct effect of provisions of Community law and that any legislative, administrative or judicial practice which has the effect of restricting the power of the court to do all that is necessary to remove national legislative provisions which might impede, even if only temporarily, the full application of Community rules is incompatible with the requirements inherent in the very nature of Community law.

In the present case, the appellant-claimant's mere contention that the respondent-defendants have circumvented the jurisdiction provided for by the Forestry Code with regard 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 jurisdiction 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 this perspective, the Court finds that the appellant-appellant has not provided any evidence of such a nature as to convince the court of the imminence of material damage which is difficult or impossible to remove subsequently, so as to fall within the exceptional nature of the suspension of the execution of the administrative act, according to the legal regime which the law currently in force confers on this legal institution.

The environmental agreement sets out the conditions and, where appropriate, measures for the protection of the environment, being the act imposing 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 every 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.

The Court noted that the practice of the Administrative and Fiscal Chamber of the Court of Cassation refers to the justified case in the sense of "the existence of an apparently valid legal argument against the unlawfulness of the act" (Decision No 1380/2008), "a factual and legal circumstance which is such as to create a serious doubt as to the legality of the administrative act" (Decision No 1837/2008). Moreover, "the conditions of a well-founded case and of the prevention of imminent damage must be met cumulatively; these conditions are mutually and logically determined, and it is not possible to speak of a well-founded case without the existence of the danger of damage and, conversely, of the imminence of damage in the absence of a well-founded case" (Decision No 2954/2006).

For those reasons, pursuant to Article 496 NCPC, the Court will dismiss the appeal as unfounded.

FOR THESE REASONS

IN THE NAME OF THE LAW

HAS DECIDED:

Dismisses the appeal filed by the appellant-claimant ASOCIAȚIA BANKWATCH ROMÂNIA with registered office in Bucharest, Bd-Dinicu Golescu, no.41, bl.6, sc.1, et.1, ap.5, sector 1, against the civil judgment no. 3532/25.11.2013 pronounced by the Ilfov Court, Civil Section in case no. 3512/93/2013 in contradiction with the respondent-defendants ITRSV RM. VÂLCEA with registered office in Râmnicu Vâlcea, Carol I, nr.37, Vâlcea county and S.C. COMPLEXUL ENERGETIC OLTENIA S.A with registered office in Târgu Jiu. Alexandru Ioan Cuza, nr.5, Gorj county, as unfounded.

Definitive.

Delivered in public sitting, today, 03.11.2014.

PRESIDENT,	JUDGE,	JUDGE,
MARIUS-CRISTIAN ISPAS	LIVIU-GHEORGHE ZIDARU	COSMIN-FLORIN PREDA

REGISTRAR

DANIELA ȘTEFAN

Jud.fond Tribunal Ilfov-Alina Dumitrescu

Red.I.M.C.

Tehnodact. I.M.C./D.Ș./2 ex