Code ECLIECLI:RO:CAPLO:2023:006.001055

ROMANIA
PLOIEŠTI COURT OF APPEALS
ADMINISTRATIVE AND FISCAL LITIGATION DEPARTMENT

File no.2873/120/2022

DECISION NO. 1055
since it was published on November 2, 2023
President - Maria Stoicescu
Judges-Ghincea Marius
Judge - Mihai Cătălin Constantin
Clerk-Trandaburu Narcisa

The resolution of the appeal declared by the plaintiff Popescu Ion is pending with domicile in [redacted], against sentence no. 97 of 15.02.2023 pronounced by the Court Dâmboviţa, in opposition to the defendant SC Nuclearelectrica SA, based in Bucharest, B-dul Iancu de Hunedoara, no. 48, Crystal Tower Building, ground floor, 4, 5 and 13, sector 1.

The appeal is exempted from the payment of the judicial stamp duty.

To the roll call made in the open session, the plaintiff responded through lawyer Rădulescu Mihaela and the respondent-defendant through counsel Suzana Carmen Dincă.

The summoning procedure is legally fulfilled.

The report of the case was made by the session clerk, who observed that written notes were submitted by the respondents through the registry service, according to which:

The parties, through their representatives, show that they have no more requests to make, appreciating the case in a state of trial.

The Court, taking into account the support of the parties, who have shown that they have no other requests to make, based on the provisions of art. 392 NCPC, declares the debates open and grants the floor in fighting the appeal.

The appellant's defender requests the admission of the appeal as it was formulated, the cancellation of the appealed sentence and the obligation of the respondent-defendant to communicate the requested information.

It shows that the trial court did not justify in fact and in law why the rules of the foreign entity UTSA regarding confidentiality would be mandatory in Romania and would remove the legal presumption that all information is public, that the judgment pronounced is given in violation of art.
488 point 8 of the CPC, violation of law 544/2001, of GD 123/2002 regarding the approval of the Methodological Norms for the application of law 544/2001 regarding free access to information of public interest, violation of law 86/2000.

There is more that the trial court does not clarify who this UTSAD is that creates law in Romania through the rules imposed, nor where these rules are stipulated which were applied by the court with priority over the national legislation and the Aarhus Convention. These confidentiality rules do not result from any normative act or convention, the court not justify the decision under this aspect.

It also shows that the trial court did not administer any evidence from which it can be concluded that such confidentiality rules really exist and that they really provide that the information requested by us is confidential:, copying the arguments of the defendant-respondent without being based on evidence submitted to the file.

It further shows that the court did not indicate any means of proof from which it can be concluded the existence of such rules of confidentiality, and the statement submitted by the appellant-defendant cannot be considered as evidence, in the sense that it

requests to state that the decision pronounced by the main case is unfounded in fact and in law.

The appellant claims that the first court violated the Law no 544/2001

According to art 4, paragraph 2 of Law 86/2000 on the rectification of the Aarhus Convention, "the previously mentioned reasons for refusal must be interpreted restrictively, taking into account the satisfaction of the public interest by disclosing the information and the possibility that the requested information is related to environmental emissions.

It also claims that neither Article 12 nor Article 4 of the Aarhus Convention allow the refusal to disclose information on the grounds that the UTSDA has established that it is confidential. As provided by the legal provisions cited above, the exceptions are exclusively provided by law. The law applicable on the territory of Romania cannot cease to apply according to the decision or the contracts concluded between different entities. Moreover, this notion of "confidential information" does not even exist in the legislation, which must be applied with priority over the UTSAD rules.

So, the court violated art. 12 of Lg 544/2001 applying an exception to free access to public information, as well as art. 4.4 of the Aarhus Convention, which is not regulated by these articles. On the territory of Romania, the rules imposed by foreign and unknown entities cannot have the value of law.

By extension, the respondent, based on financing received from a foreign entity a meaning to no longer applies the legislation applicable at the national level and makes a final decision on the location of a nuclear power plant in secret, rarely communicating anything to the public about the study carried out and the alternatives studied. Given the above, he requests the admission of the appeal as it was formulated, the annulment of the appealed sentence and the obligation of the respondent-defendant to communicate the information requested. With separate court costs.

The representative of the respondent requests the rejection of the appeal as unfounded, with the maintenance of the sentence civil no. 97 of I 5.02.2023 pronounced by the Dâmboviţa Court, as being legal and thorough.

It shows that the appellant believes that the court should have justified in fact and in law why the rules of the foreign entity UTSAD regarding confidentiality would be binding in Romania and would remove the legal presumption that all information is public, this criticism is not founded, because the court analysed and noted that the answers provided by the defendant to questions I and 3 of the request for information are enlightening and comprehensive, providing detailed explanations regarding the method of analysing the location so that a refusal to smoke cannot be retained the requested information.

In conclusion, he requests the rejection of the appeal, as he showed in the response.

Free costs of judgment.

court, under the provisions of art. 394 NCPC, declares the debates closed and remains in the pronouncement on the appeal.

COURT

Deliberating on the present appeal, finds next:

Through sentence no. 97 of J 5.02.2023, the Dâmboviţa Tribunal rejected the summons request, that unfounded.

Against this verdict declared an appeal criticizing the plaintiff Popescu Ion-Dragoş *for illegality, asking for admission of attack promoted,* admitting the appeal, Scrapping the sentence appealed and obliging the respondent-defendant to communicate the information requested, to it is noted that the judgment pronounced by the trial court It is unmotivated in fact and in law.

In the motivation of the appeal the appellant showed by email to the respondent at dated 15.07.2022, the public information that is the subject of the present causes, on the date of 27July 2022

(...)
reasoned in law by the provisions of art 4 paragraph 4 letter d of Law 86/2000 ratifying the Aarhus Convention, provisions according to which: "A request for environmental information can be refused if its disclosure would negatively affect - letter d) the confidentiality of commercial and industrial information, if this is provided by law to protect a legitimate economic interest.
Moreover, contrary to the claim of the appellant, the court justified its decision in law, citing the provisions of art. 4 paragraph 6 of Law no. 86/2000 in the sense that 'Either has to ensure that,
if the information exempted from the rule of being made public in accordance with point 3 (c) and 4 of this article, can be separated without prejudice to confidentiality of information excepted, public authorities to put it the provisions that part of the environmental information requested, which can be disclosed.
The appellant, criticised the first court decision, claiming that the trial court did not clarify who
is UTSAD,to miss that the name used by the appellant is wrong, agreement of financing being concluded with the United States Trade and Development Agency (USTDA), as it results from the responses of the underwriters, sent to the petitioner. being a US Government agency, any funding granted by USTD, in any field, is transparent and, for this reason, a public version of the study will be published on the agency's website. It also specifies that the financial support fromUSDA does not constitute a decision, in the sense of art. 6 of the Convention and, as a result, does not oblige the disclosure of certain information. In addition, the study contains technical information related to the technology of modular reactors, information received under the non-disclosure clause based on confidentiality agreements concluded by SNN with the suppliers of this information.

Civil sentence no. 97/15.02.2023 pronounced by the trial court is motivated both in fact and in law, and the inclusion of the appellant in the ground of appeal provided by art. 488 para. 1, point 6 Procedural Code civ., not verified.

Regarding the reason for the appeal provided by Art. 488 point 8 Procedural Code The civil court notes that it refers to the fact that the judgment was given in violation or incorrect application of the rules of substantive law.

The text takes into account the situations in which the court resorts to legal texts that are of a nature that leads to the settlement of the case, but either violates them in their letter or spirit, or applies them incorrectly, the interpretation he gives being too broad or too narrow, or completely erroneous.

Proceeding to the examination of the formulated criticisms, it is noted that the trial court gave relevance to the administered evidence, analysing the case brought to the judgment through the lens of the relevant legal texts and referring to the existing documentation.

First of all, the trial court correctly defined the subject of the file, stating that recurrence requested the obligation to subscribe to the provision of information of public interest.

The appellant's criticism, in the sense that the court, by the pronounced sentence, would have violated the provisions of art. 6 of Law no. 86/2000 ratifying the Aarhus Convention, regarding public participation in decisions regarding specific activities, is not founded. In this sense, in the motivation of Civil Sentence no. 97/15.02.2023, the trial court showed that the provisions of art. 6 of Law no. 86/2000 is not applicable in question, because the litigation has one that object is to restrict the public from taking decisions regarding the specific activities provided for by Law no. 86/2000. Also in solving the case, the court also retained the facts per the Aarhus Convention, public authorities must provide the public with information on environmental issues, which is not the case here because the study it is not a measure of administrative, environmental agreement, policy, plan or program of the public authority and not stay on the basis of a decision or starting an authorization procedures impact assessment. Thus, the criticism from the appeal regarding the fact that based on the study would be taken a final decision on the location of a nuclear

power plant in secret, free to communicate anything to the public in connection with the study carried out and with the studied alternatives" is proof of persistence in an obvious error, an error both in reasoning and in the grounds of appeal provided for by art. 488 point 8 of the Procedural Code. civil

The Court, following an analysis systematic of the arguments of the parties, the administered evidence, both by reference to the applicable legal provisions, notes: in *agree with both The respondent defendant,* but also with those retained by the contested sentence, contrary to the criticisms of the appellant-plaintiff in the case, criticisms that must be removed as unfounded, that even in the hypothesis of another litigation regarding the restriction of environmental information - art. 6 of Law no. 86/2000, cannot be applicable to the factual situation, because, as the legislator also provided in Law no. 292/2018 regarding evaluation impact certain public and private projects on the environment and OG no. 7/2003 regarding the use of nuclear energy for exclusively peaceful purposes, the final decision regarding the location of the modular reactor will be taken after completing numerous stages, in a later phase, based on environmental impact assessment studies, nuclear security analyses in in order to obtain authorizations and approvals from the Ministry of the Environment, based on information and public participation, from CNCAN (National Commission for the Control of Nuclear Activities), the site being approved by Government Decision.

The Court, following a systematic analysis of the arguments of the parties, the administered evidence, both by reference to the applicable legal provisions, holds in *agreement with both the defendant-respondent,* but also with those retained by sentence attacked, contrary to the criticisms of the appellant-complainant in the case, criticisms that must be removed as unfounded, that the Doicesti site is, according to internationally recognized specialist technology, a preferred candidate site. The study was developed, as stated in the answers to the request for information, based on the International Atomic Energy Agency (IAEA) guide SSG35 - Site Survey and Site Selection for Nuclear Installations. The objective of this guide, as defined in the document itself, is to provide recommendations and guidance in establishing a systematic site evaluation and selection process for a number of preferred candidate sites. the entire guide enshrines the terminology of preferred candidate locations and states throughout its content that the final decision regarding the location will be confirmed in a later phase, called site characterization (eng. site characterization) based on environmental impact assessment studies, specific nuclear security analyses, etc., necessary to obtain the necessary authorizations and approvals according to the provisions of the applicable national and international legislation.

Regarding the communication of environmental information from the study, by reference to the provisions of the Aarhus Convention, reiterating what was stated before the first instance, the Court, following a systematic analysis of the arguments of the parties, the administered evidence, both by reference to the applicable legal provisions, holds in agreement *both with respondent,* but also with those retained by the contested sentence,--against the criticisms... of the appellant-plaintiff in question, criticisms that must be dismissed as unfounded, that the study does not contain environmental information.

According to art. 4 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (hereinafter “Convention"), ratified by Romania through Law no. 86/2000, public authorities must make information on environmental issues available to the public. .

In the preamble of the Convention, it is stated, among other things, that it aims for a better

awareness of environmental decision-making recognizes that the public must be aware of the procedures for participation in the decision-making process decisions with implications on the environment and that public authorities have information on the environment, which is of public interest, and which they must disclose to the public.

In this context art. 2 of the Convention defines in point 3 environmental information as "any written, visual, audio, electronic or in any material form regarding:

a) the state of environmental elements such as air AND atmosphere, water, soil, earth, landscape and natural areas, biological diversity and its components, including organisms genetically modified and the interaction between these elements;

b) factors, such as: substances, energy, noise and radiation and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and the programs that affect or may affect the environmental elements mentioned in sub-point a), analyses cost-benefit or other economic analyses and forecasts used in environmental decision-making

c) the state of health and human life, the conditions of human life, cultural areas and constructions and the way in which they are or can be affected by the state of the environmental elements or by the factors, activities or measures contained in subsection b.

In relation to what has been shown, regarding Sentence 97/15.02.2023 pronounced on the merits by the Dâmbovița Court, the Court notes that the aspects invoked by the appellant were presented before the examination before the first court, being properly analyzed by it, so that by invoking similar arguments in the content of the appeal request are only attempted to carry out a reassessment by the court of judicial review, regarding the merits of the appealed sentence, not containing genuine criticisms of illegality brought to the contested decision.

In the conditions, the court of appeal is not entitled to reanalyse the evidence administered, then in the extent to which of analysis imposes through the prism of the wrong application by the court of background of some legal provisions, such as the procedural rules regarding the method of administration of evidence or the probative force of such means administered, aspects that were not invoked as such by the appellant-plaintiff.

In conclusion, the COURT OF APPEALS PLOIEŞTI finds that the arguments presented by the appellant-plaintiff in the way of appeal are not able to determine the reformation of the substantive decision, since it was given with the correct interpretation and application of the material law norms incident to the case.

For the reasons set forth, the COURT OF APPEALS PLOIEŞTI, based on the provisions of art. 20 paragraph (3) of the Administrative Litigation Law no. 554/2004, with subsequent amendments and additions, in conjunction with art. 496 paragraph (I) Civil Procedure Code, will reject the appeal as unfounded.

FOR THESE REASONS, IN THE NAME OF THE LAW DECIDES:

Rejects the appeal declared by the plaintiff Popescu Ion-Dragoş, domiciled in [redacted] against sentence no. 97 dm dated 15.02.2023 pronounced by the Dâmboviţa Court, contradicting the defendant SC**Nuclearelectrica SA,** with headquarters in Bucharest, B-dul Iancu de Hunedoara, no. 48, Crystal Tower Building, ground floor, 4, 5 and 13, sector 1, as unfounded.

Definitive.

Pronounced in public session, today 21.11.2023.

President,

judges,