

Administrative and Tax Court of Sintra Common Administrative Court

Case No 576/23.4BESNT

Summons for provision of information and issue of certificates

Sentence

Parish of Covas do Barroso, m.i. in the case file, came, pursuant to article 104 et seq. of the CPTA, to institute against the Portuguese Environment Agency, better identified in the records, the present subpoena process for the provision of **information**, consultation of files or issuance of certificates, to satisfy the request for *"access to the applicant without any restrictions"* *"In person and on a date to be determined"* regarding the *"administrative process of the ongoing environmental impact assessment process - EIA Procedure No. 3353 – "Barroso Mine", as well as the "full consultation of the aforementioned process as well as all its elements and procedural parts"*.

Attached documents.

Summoned, the defendant filed a response, invoking the lack of fulfillment of the conditions of the summons process in question, as well as the respective lack of interest in acting, considering that the availability of the requested file/documentation, for access and consultation, without the imposition of restrictions, on a date set by the defendant has already been achieved, as communicated on 30/05/2023.

Attached documents.

After notifying the Applicant of the response submitted by the Defendant it defended the rejection of the objections raised.

- The facts;

The following facts are considered to be of interest for the decision of the case:

- a) The Applicant is a local authority with the aim of safeguarding the interests of its population and territory in the Parish of Vila Cova (sic), Municipality of Boticas, with the respective attributions in accordance with articles 2 and 7, paragraph 2, both Law No 75/2013 of 12 September 2013 (agreement);
- b) A16/05/2023, the Applicant sent a letter to the Respondent requesting a face-to-face consultation of the administrative process of the ongoing environmental impact assessment process – EIA Procedure No 3353 – "Barroso Mine", which reads as follows "(...) As the case no. 132/23.7BEMDL, Organic Unit of the Administrative and Fiscal Court of Mirandela, is ongoing, in which the Applicant is the Plaintiff, being the Defendant the Ministry of the Environment and Climate Action and the Counter-interested party Savannah Lithium, S.A. requests that you deign to admit the face-to-face consultation on the 23-05-2023 in the afternoon of the administrative process of the ongoing environmental impact assessment process (cf. articles 1 and of the CPA and articles 5, 8 and 28 of Decree-Law no. 151-B/2013, of 31 October). (...)"; (cfr.doc. 1, attached to the file with PI and appeal);

- c) On 23/05/2023, the applicant's Representative went to the Respondent's headquarters to consult the above-mentioned file;
- d) On the above-mentioned date, the consultation was refused by the Respondent, and the respective representative filed a complaint on behalf of the Applicant, having been informed by the APA services that he would receive a response to the request within 10 days (cf. complaint and agreement);
- e) On 30/05/2023, the defendant sent a letter by e-mail, in which it granted access to the file, indicating the dates of 6 or 7 June 2023, requesting an indication of the date and period intended for the consultation (cfr.doc 2. Attached to the case file with the defence);
- f) On 05/06/2023, an e-mail was sent by APA requesting information on the date chosen for the purpose of consulting EIA file No. 3353, informing of the availability to provide such consultation on a date alternative, in case of impossibility (cf.doc. 3, attached to the case file with the defence);
- g) The aforementioned electronic communications were sent to a non-existent email – tm@cavaleiroadvogado.pt, instead of trm@cavaleiroadvogado.pt (cfr.doc. attached to the case file by the parties);
- h) On 06/06/2023, the initial application that gave rise to the present case was filed (cf. fls. 1 of the SITAF numbering);

There are no unproven facts relevant to the decision of the case. *

The proven facts are based on the critical analysis of the documents attached to the case file, as indicated in each paragraph of the evidence.

*Article 268 (1) of the Constitution enshrines the right and guarantee of the administered to be informed by the administration, whenever they so request, of the progress of the proceedings in which they are directly concerned, and to know the final decisions taken on them, which is the procedural aspect of the right to information;

In turn, the right to information, both procedural and non-procedural, is embodied in the Code of Administrative Procedure (CPA), comprising three distinct rights: the right to the provision of information (Article 82), the right to consultation of the file and the right to issue certificates (Article 83).

Article 83 of the CPA, entitled "Consultation of the file and issue of certificates", provides:

"1 - Interested parties shall have the right to consult the file which does not contain classified documents or which reveal commercial or industrial secrets or secrets relating to literary, artistic or scientific property.

Article 15 of Law No 26/2016 of 22 August 2016, entitled "*Response to the request for access*", provides that:

1 - The body to which the request for access to an administrative document has been addressed shall, within 10 days:

a) *Communicate the date, place and manner of the consultation, if requested;*"

On the other hand, from a procedural point of view, Article 104(1) of the CPTA provides that: *"when requests made in the exercise of the right to procedural information or the right of access to administrative archives and records are not fully complied with, the interested party may request the summons of the competent administrative body"*.

However, what the applicant wanted in these documents was simple access to and consultation of an administrative procedure **in the environmental impact assessment process**, which has not yet been carried out, it should be noted, due to mere errors on the part of the defendant in sending the communication of access.

In those circumstances, such a concession on the part of the APA does not amount to a lack of a procedural requirement or even to a lack of interest in bringing proceedings on the part of the applicant, since, on the date on which the action was brought, there was, in the applicant's view and knowledge, a failure to respond within the period of 10 days referred to in Article 15 of Law No 26/2016, as well as the absence of consultation, the same being true of the interest in bringing proceedings on that date.

However, in view of the administrative situation of granting access, on the part of the Applicant, and verifying what has not yet occurred, purely and simply, not only because of the existence of the present case, but also because of the lack of a date agreed between the parties, it will always be said that there is a supervening futility of the litigation, even if singular, to the extent that, in the course of the present proceedings, it has been apparent that neither the APA denies the respective access, nor does the plaintiff intend something that it has not already obtained, and it is obviously not up to the court to determine appointment schedules, nor even to assess the practice of irregularities or administrative errors, considering that such issues go beyond the purpose of the present procedural means.

In fact, access has already been granted, and it is only up to the parties to agree on a date and time for the respective consultation.

As is well known, the futility of the action arises when, as a result of an event occurring during the pendency of the proceedings, the resolution of the dispute ceases to have all interest and utility, thus leading to the extinction of the proceedings, as provided for in Article 277(e) of the Code of Civil Procedure.

The supervening futility or impossibility may arise due to the disappearance of the subjects or the object of the proceedings, or be outside the scheme of the intended provision. *"In either case, the resolution of the dispute ceases to be of interest – moreover, because of the impossibility of achieving the desired result; here, because it has already been affected by another means"* - José Lebre de Freitas, João Redinha, Rui Pinto, Código de Processo Civil anotado, vol 1, annotation³ to article 287 (in a commentary on the previous CPC, p. 512);

In view of the above, considering the response given by the Respondent in the present case, which grants the requested access to the administrative file, on a date and period to be determined, in the terms requested, it appears that the Applicant's claim has already been satisfied by the Respondent, at a time subsequent to the beginning of the present proceedings, so that the present petition must be dismissed, for the supervening futility of the litigation – cfr. Article 277(e) of the CPC, applicable ex vi Article 1 of the CPTA.

Considering that the present action results from the untimely sending of an e-mail granting access to the file, due to an error of address on the part of the defendant, the defendant is ordered to pay the costs of the proceedings – cf. Article 536(3) in fine and (4) of the CPC and Article 12(1), b) the Litigation Costs Regulation.

* The amount of 30,000.01 euros is fixed for the case.

*In the terms and for the reasons set out above, I dismiss this appeal,

for the supervening futility of the litigation.

Costs for ER. Value of the claim – 30,000.01 euros. Register and notify.

Sintra, (date of affixing of the electronic signature). The Judge of Law

Pereira Coelho

(This decision was drawn up in computer format, through SITAF, with the affixing of an advanced electronic signature – cf. article 16 of Ordinance no. 380/2017, of 19 December).

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