**RULING**

**No. 8885**

**Sofia, 20.06.2012**

**The Supreme Administrative Court of the Republic of Bulgaria – Fifth Division,** in a closed meeting of panel with:

 **CHAIRPERSON:** DIANA DOBREVA

 **MEMBERS:** VIOLETA GLAVINOVA

 ILIANA SLAVOVSKA

and secretary and with the participation of the prosecutor heard the report of the

chairperson DIANA DOBREVA

on administrative case No.7659/2012.

The proceeding is under Art 229, Para.1 of the Administrative Procedure Code (APC).

It is instituted by interlocutory appeals of the Association “Green Balkans”-Plovdiv and Bulgarian Society for Protection of Birds-Sofia against ruling No. 1421/22.03.2012 on administrative case No. 1079/2012 rendered by the Administrative Court – Varna. In it arguments are given on the irregularity of the judicial act and a request for its repeal is placed.

No response is available in accordance with Art. 232 of the APC.

The Supreme Administrative Court, a panel of Fifth Division, considers that interlocutory appeals are procedurally admissible as filed within the statutory period and by a proper party. To deliver a judgment upon its merits it has accepted as established the following:

With the appealed ruling the court has rejected the appeals of the Association “Green Balkans” and Bulgarian Society for Protection of Birds against decision No. PI-1/2012 (ПИ-1/2012) of the Director of the Regional Inspectorate of Environment and Water (RIEW)-Varna by which pursuant to Art.60, Para.2 of the APC preliminary execution of the Environment Impact Assessment (EIA) Decision No.VA-7/2012 (BA-7/2012) was admitted. With the EIA decision is approved the implementation of the investment proposal with contracting authority Consortium WIND ENERGY OOD for construction and operation of energy wind farm (EWF) with total capacity of 190 MW in the region of the villages Vaklino, Granichar, Chernomortsi, Smin, Staevtsi, Bozhanovo and ZahariStoyanovo of the Shabla Municipality, and v.Bezhanovo, General Toshevo Municipality, consisting of 95 pcs wind turbines, two substations and underground cable network, and combining 4 pieces of EWFs. The admitted anticipatory execution of the EIA decision is justified on the grounds of the public importance of the investment proposal, which is part of the system of practical measures of implementation of the national commitments of the Bulgarian state to achieve certain levels of production of electricity from renewable energy sources to ensure energy independence of the country from the traditional energy sources.Considerations are presented also about the investor’s economic interests in the construction and operation of the wind power farms, which are related to a series of necessary and requiring time administrative actions.

To confirm the contested decision for the admission of the preliminary execution of the administrative act, the court has accepted that the decision of the director of the RIEW Varna is a lawful administrative act. The said is issued in the presence of the substantive prerequisites of Art.60. Para.1 of the APC – to ensure protection of the party requesting the admission as well as the social significance of the investment project.

The ruling is correct.

In this case the preliminary execution of the decision of the director of RIEW Varna is admitted as a protection of an important for the country in the production property interest, as well as implementation at national level of the commitments of the Bulgarian state to achieve certain levels of energy production from renewable energy sources. General criterion for the prerequisites under Art.60, Para.1 of APC is the possibility of significant or irreparabledetriments from the delay in execution to which cannot be opposed such or more significant detriments from its admission.

Thepresent instance considers that the implementation of the project for construction of WPF at this stage of the procedure where its finalization is only possible with EIA decision entered into force, will satisfy not only the economic interests of the company, but would not affect the public interests, too. Therefore, comparing the damages from the execution and non-execution of decision No. VA-7/2012 of the director of RIEW, the court finds that the delay in its execution may cause significant detriments.

Evidence from private appellants in the opposite direction is not engaged whereatthe appealed ruling should be confirmed.

Of the foregoing, the Supreme Administrative Court, a panel of the Fifth Division

**HAS RULED:**

**REMAIN IN FORCE** ruling No. 1421/22.03.2012 on administrative case No. 1079//2012, rendered by the Administrative Court – Varna.

The ruling shall be final.

|  |  |  |
| --- | --- | --- |
| **True to the original** | **CHAIRPERSON:**/signature/ | Diana Dobreva |
| **Secretary:** |  **MEMBERS:**/signature/ /signature/ | VioletaGlavinovaIlianaSlavovska |