RULING IN THE NAME OF THE SLOVAK REPUBLIC

The Regional Court Bratislava decided as a senate chaired by Dr. Soňa Langová and the senate members Dr. Judita Kokolevská and Dr. Milota Tothová in the case of the plaintiff Greenpeace Slovakia, Nám. SNP 35, PO BOX 58, Bratislava, represented by the lawyer Mag. Eva Kováčevová, AK Komenského 21, Banská Bystrica, against the defendant Nuclear Safety Authority SR, Bajkalská 27, PO BOX 24, Bratislava on the legitimacy of the defendant´s decision No. 79/2009 (No. 1006/2009) of April 28 2009:

The Regional Court Bratislava dismisses this complaint.

The participant in the proceeding does not receive any compensation.

Explanation

The plaintiff demanded in this lawsuit that the legitimacy of the defendant´s decision No. 79/2009 (No. 1006/2009) of April 28 2009 is questioned, legal force withdrawn and the case returned into another proceeding. The defendant dismissed the appeal which the plaintiff filed on November 14 2008 against the UJD SR Decision No. 246/2008 of August 4 2008 (File 684/230-231/2008) which UJD received on November 19 2008 and confirmed at the same time the decision UJD SR No. 246/2008 of August 14 2008 (File 684/320-231/2008) which permitted the construction changes before completion for the "Nuclear Power Plant Mochovce WWER 4x400 MW 3rd construction". The plaintiff stated that he took part as a participant in the proceeding concerning the construction changes before completion conducted by the applicant Slovenské elektrárne a.s. and filed a written statement dated June 25 2008, with additional changes on August 13 2008, pointing out which documents are missing in the construction licensing, i. e. the Final Statement of the Environmental Impact Assessment (EIA).

[…]

The court proceeding focused on the two fundamental issues the plaintiff had raised, which is the right to court standing at the licensing procedure of construction changes before completion of NPP Mochovce 34 and the second complaint concerning the EIA, which would have had to be conducted before the permit No. 246/2008 (No. 684/320.231/2008) of August 14 2008 was taken.

According to § 59 par. 1 of Act No. 50/1976 Coll. on town planning and building regulation (building act) party to construction proceedings are:

Article 59

Participant of building proceedings

(1) Participants of building proceedings are

a) the developer,

b) persons, who have ownership or other rights to the lands and the buildings on them, including neighbouring lands and buildings if their ownership or other rights to these lands and buildings may be directly affected by building permission,

c) other persons if this position results from the separate regulations,

d) building supervision or qualified person,

e) the project engineer of the part that relates to the project of building.

According to § 68 (1) of the quoted law, the building authority may permit in justified cases on the application of the developer allow changes to the building before its completion.

According to § 68 (2) of the same law, the building authority examines to the extent to which the change affects the rights, the legally protected interests or obligations of participants of the building proceedings, as well as the interests protected by the relevant authorities, the building office shall review the application and shall issue a decision with which it shall allow the change, upon which it shall also rule on any objections from participants and determine if necessary further binding conditions, or shall refuse the application. For proceedings on the change the provisions referring to building proceedings apply appropriately.

According to § 121(2) of this law, the functions of building offices, with the exception of powers in the matter of land-use decision-making and appropriation are carried out under this Act

a) by the Ministry of Defence for buildings under military administration outside the territory of military districts,

b) by the Ministry of the Interior of the Slovak republic for buildings intended for security of state,

c) by the Ministry of Justice of the Slovak Republic for buildings of the Prison and Justice Guard Corps of the Slovak Republic,

d) by the Ministry of the Economy of the Slovak Republic for buildings in the uranium industry,

e) by the Nuclear Inspectorate of the Slovak Republic for buildings of nuclear facilities and buildings related to nuclear facilities in the complex that is separated by the boundaries of nuclear facilities.

According to § 140 of this law, unless explicitly stated otherwise, general regulations on administrative action apply to proceedings under this Act.

According to § 14 (1) of the Administrative Code, the person whose rights, legitimate interests and duties are the subject matter of the proceedings or whose rights, legitimate interests and duties may be directly affected by the decision shall be party to the proceedings; furthermore any person claiming that his rights, legitimate interests and duties may be directly affected by the decision shall be party to the proceedings until the contrary is proved.

According to § 14 (2) of the same law, also the person whose status of the party to the proceedings is recognized by special legislation shall also be party to the proceedings.

In the case at hand, the special legislation (building law), which has precedent over the general regulation (Administrative Code) determines the circle of parties to the proceedings under examiniation. The special law pointed out by the plaintiff which is supposedly enlarging the circle of parties to the proceedings, is the Aarhus Convention.

The plaintiff demands participation of the public on specific activities according to article 6 of the Aarhus Convention.

[…]

In this case the court believes that none of the mentioned activities was subject of decision taking and therefore the plaintiff did not have the right of party to the proceeding based on special legislation.

According to § 46 the decision must be in compliance with the law and other legal regulations, must be pronounced by the competent authority, must be based on the reliable determination of the face of affairs and must contain the required essentials.

According to § 47 (2) of the same law, the verdict shall consist of the decision on the matter and the provision of the legal rule based on which the decision was taken and, if appropriate, also an order to refund the expenses incurred during the proceedings. If a decision imposes a duty to fulfill a certain obligation upon one of the parties, the administrative authority shall assign the party a period which may not be shorter than the period provided by special legislation.

According to § 47 (3) the motivation shall state what facts were relevant for the decision and what were the considerations which influenced the process of evaluation of the evidence and of using the legal rules based on which the decision was taken.

The court – based on the administrative file presented – gained conviction, that the construction permit Výst. 2010/86 of November 12 1986 for the construction of „NPP Mochovce 4x400 MW 3. construction“ issued by the Regional national committee Levice, construction and spatial planinng section is legally valid.

Concerning the plaintiff's first appeal, the Court concluded, that the plaintiff's participation in the permitting procedure for construction changes before completion of „NPP Mochovce 4x440 MW 3. construction“ cannot be judged based on Art. 6 of the Aarhus Convention, because this was not a permit for an activity pursuant to Annex 1 of the Aarhus Convention, because the decision No. 79/2009 (No. 1006/2009P) of 28 April 2009 does not have any environmental impacts. The extent of activities according to Annex 1 of the Convention, which in the opinion of the Court refers to the access of the interested public, is only referring to permitting procedures, which are listed in the relevant Annex. In this case, this is not a procedure on the operation of a nuclear power plant. The Court stated concerning the permitting procedure according to § 68 para 1 and 2 Building Act, that this procedure is strictly conducted in line with the Building Act provisions; therefore there is no doubt, that the circle of parties to the procedure is taxatively determined by provision § 59 para 1 Building Act, being a special law concerning the parties to the construction procedure, which in the Court's opinion excludes the status of party to the procedure according to § 14 para 1 of the Administrative Code No. 71/1967 Coll.

The general provision of the Administrative procedure however do apply to the procedure on the Building Act in the sense, that once the defendant concluded, the the plaintiff is no party to the procedure, this decision the defendant had to communicate to the plaintiff and in this connection the Court sees a procedural mistake of the defendant, because he did not decide in the construction changes before completion, that the plaintiff will not receive status of party.

However, this procedural mistake was later remedied, because on the one hand the defendant provided the plaintiff with information on this case and took into consideration the appeals in the appeal procedure by formulating an opinion in the decision No. 79/2009 (No. 1006/2009 P) of 28 April 2009, also concerning participation in the procedure and the appeal and because the plaintiff's protection by the Court as a fully legitimate participant in the court procedure was not denied. The procedural mistake of the administrative body consists therein that not formal decision concerning the participation was communicated to the plaintiff. This however is in the opinion of the Court no reason the appealed decision to expire, because a repeated procedure would not have delivered a more beneficial decision in the examined case. To refer this back to another procedure would have only led to a prolongation of the administrative procedure and thereby contradicting the principle of taking an economical attitude, since it would not have led to another decision in favour of the participant in the procedure.

Concerning the procedure of issuing the construction permit for changes before completion for the „NPP Mochovce 4x440 MW 3rd construction“ the Court confirms that this is a building proceeding in connection with the already legally valid permit for the „NPP Mochovce 4x440 MW 3rd construction“, which had been issued by the National Committee Levice, Construction and Spatial Planning, with the permit No. Výst. 2010/86 of 12 November 1986 and therefore it does not constitute an independent building procedure. The documentation contained in the administrative file of the defendant clearly proves, that this procedure concerns changes in the construction and technology of the project, which still fulfill the purpose of guaranteeing nuclear safety and reliability in accident situations and therefore represent an increase of the level of environmental protection.

The Court concluded that this is not a new activity, which would require a permit for the operation of a new nuclear facility and would clearly make an EIA necessary according to Art. 6 of the Annex 1 of the Aarhus Convention. The court states, that the defendant acted in this case of a permit for changes before completion for NPP Mochovce 34 during the whole context of the building procedure, because construction changes need permission according to Act No. 50/1976 Coll and all statements of affected authorities and parties to the procedure were received, also of the Ministry of the Environment, which is the relevant authority according to Act No. 24/2006 Coll. on the EIA.

The documents contained in the administrative file provide prove, that no additional soil was taken out of the soil fond (contrary to the decision in the construction proceeding), which would lead to environmental impacts, no impacts occurred into protected zones or area and everything took place on an area, which is owned by the NPP Mochovce. Based on the decision No. 246/2008 (No. 684/320-231/2008) of August 14 2008 the court found, that the discussed changes garantuee an increase in nuclear safety. The change only consist in a change of materials used, of constructions on the basis of scientific development and however not on the decisions concerning the intended release of genetically modified organisms into the environment, what the Aarhus Convention is refering to.

Due to the reasons mentioned above, the Court concluded that the defendant had decided in line with the laws and therefore the complain is dismissed.

Therefore the Court dismisses the complaint according to regulation § 250j para 1 civil law order.

Concerning court fees the Court decided in line with § 250k para 1 civil law order that the insuccessful plaintiff shall not receive restitution and the complainant does not have a legal to restitutions.

The senate of the Regional Court Bratislava voted 3 – 0 in favour of this decision.

This decision can be appealled against at the Supreme Court of the Republic of Slovakia via this Court during 15 days after this ruling has been delivered. The appeal needs to fulfill the points of provision § 205 civil law order.

In Bratislava, May 11 2012

Dr. S. Langová

Chairwoman of the Senate