

BOSNIA AND HERZEGOVINA
FEDERATION OF BOSNIA AND HERZEGOVINA
CANTON OF SARAJEVO
CANTONAL COURT IN SARAJEVO
No. 09 0 U 027237 16 U
Sarajevo, October 14th, 2019.

Cantonal court in Sarajevo, judge Slavica Džaferović, in an administrative dispute, raised by a plaintiff, Association for the protection and promotion of the environment, nature and health "EKOTIM" from Sarajevo, address Grbavička No. 50, represented by the President of the Association, Rijad Tikveša, against the respondent, Federal Ministry of the Environment and Tourism Sarajevo, and an interested party, Public Company of the Electric Power Company of Bosnia and Herzegovina, joint stock company, Sarajevo, address Vilsonovo šetaliste No. 15, for annulment of Decision No. UPI/05/2-23-71/15 of July 18th, 2016, in the case for issuance of an environmental permit, on October 14th, 2019, rendered the following:

DECISION

The lawsuit is dismissed.

Reasoning

By the contested decision of the respondent, the number and date, as stated in the introduction of the item 1 of the verdict, a renewed environmental permit for the Public Company of the Electric Power Company of Bosnia and Herzegovina is issued for the power plant and the combustion of block 7 TPP Tuzla with installed capacity of 450 MW in the Tuzla Thermal Power Plant. The verdict of the contested decision determined the location of the power plant, then the power plant for which the environmental permit was issued, the impacts, conditions and measures to mitigate the negative effects during the construction and use phases. The construction phases, as well as other conditions under which the environmental permit is issued, as further determined by the verdict of the contested decision.

By a lawsuit dated September 30th, 2016, the plaintiff raised an administrative dispute before this court, challenging the respondent's decision on the grounds of violation of the rules of administrative procedure, incorrect and incompletely established facts and misapplication of material law. The lawsuit alleges that the plaintiff, in the procedure that preceded the adoption of the contested decision, raised objections to the Documentation, and in such way, the plaintiff participated in the process of making the contested decision, as an interested entity. However, the respondent authority did not accept the fact that the plaintiff was a party to the proceedings, which is why the respondent did not even provide the plaintiff with the contested decision from July 18th, 2016. It was not until after the plaintiff's request for delivery of the contested decision dated July 18, 2016, that the respondent submitted the contested decision to the plaintiff on September 30th, 2016, and therefore, within the statutory time limit of 30 days, plaintiff raised an administrative dispute against the contested decision before the court. The plaintiff points out that, within the meaning of Article 64 (3) and Article 58 (3) of the Environment Law of FB&H, it is a party to the proceedings, which the defendant did not appreciate, because it did not consider the objections and suggestions made by the plaintiff to the respondent, and therefore considers that the factual situation was erroneous and incomplete, setting out in detail the reasons why the contested decision was issued contrary to the provisions of Article 12., item 4 of the Law on Administrative Disputes of FB&H. The lawsuit suggested that the court challenges the decision as being unlawful, to annul it and return the case to the respondent for retrial.

In its response to the lawsuit from November 1st, 2016, the respondent pointed out the objection and the lack of active legitimacy on the part of the plaintiff and the objection to the timeliness of the lawsuit. From the content of the response to the lawsuit, it follows that the respondent fully retains the reasons given in the reasoning of the contested decision because it considers the same to be proper and lawful. The respondent suggested that the court discard or dismiss the lawsuit as unfounded.

Interested party, and by its submission dated November 23rd, 2017, also highlighted the plaintiff's lack of active legitimacy and raised the objection of the lawsuit's timeliness. The interested party suggested that the court discard or dismiss the lawsuit as unfounded.

The court rendered the verdict in its decision, for the following reasons:

Provision of the Article 58. of the Environmental Protection Law of FB&H ("Official Gazette of the Federation of B&H" No. 33/2003) to which the plaintiff refers in the lawsuit, pointing out that by this provision it is recognized as a party, as an interested party in the specific administrative matter, the provision that was amended by the Law on Amendments to the Law on Environmental Protection of FB&H ("Official Gazette of the Federation of B&H," No. 38/2009) by the provision of Article 22., which provides that paragraphs 1 and 2 of Article 58. of the Environmental Protection Law are deleted, where the former paragraph 3 shall become paragraph 1; is amended to read: "For plants and power plants requiring a previous environmental impact assessment, the competent ministry shall submit an application for an environmental permit, together with annexes, to the competent authorities and interested entities, for the purpose of providing opinions and suggestions."

The said Law, based on which the contested decision was made, defined the term interested party, so that: "interested party/authority" - is a natural or legal person or organization that lives or works in an area of influence or area likely to be affected.

Bearing in mind the cited provisions of the Law, as well as the fact that the plaintiff is the Association, based in Sarajevo, at address Grbavička No. 50, as indicated in the lawsuit, and that the environmental permit in question was issued to the Public Company of Electric Power Company of Bosnia and Herzegovina for the Combustion-Block Plant 7 TPP Tuzla, with an installed capacity of 450 MW in the Tuzla Plants Thermal Power Plant - the plaintiff does not have the capacity of an interested party within the meaning of the Environmental Protection Act, as a substantive law.

The plaintiff does not even have the status of an interested person within the meaning of Article 15., paragraph 1 of the Law on Administrative Disputes ("Official Gazette of the Federation" No: 9/05), which provides that when an individual is a member of a social organization or association of citizens which by its rules (statute) has the task of protecting the specific rights and interests of its members, and an administrative act violates such a right or interest, then that social organization or association may, on the written consent of its member, bring an action on the behalf of that member and lead an administrative dispute against such administrative act.

It does not follow from the content of the lawsuit that the contested decision violated the right or legal interest of one of the plaintiff's members and that the plaintiff, upon the written consent of its member, was given the authority to bring an action on behalf of its member and to conduct an administrative dispute.

For these stated reasons, in accordance with the provisions of the Article 25., paragraph 1 of the Law on Administrative Disputes, this court decided as it reads in the verdict of the decision.

(stamp of the court)

J U D G E
signature of the judge
Slavica Džaferović

INSTRUCTION: Against this decision, appeal cannot be raised.