

BOSNIA AND HERZEGOVINA
FEDERATION OF BOSNIA AND HERZEGOVINA
CANTON OF SARAJEVO
CANTONAL COURT IN SARAJEVO
No. 09 0 U 026266 16 U
Sarajevo, November 27th, 2019.

Cantonal court in Sarajevo, judge Rada Bjeljac Delić, 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 Tikveša Rijad, against respondent Federal Ministry of the Environment and Tourism Sarajevo and an interested party Brown coal mines "Banovići" joint stock company Banovići, address Armije BiH No. 52, represented by the attorney Alić Damir from Tuzla, for annulment of Decision No.: **UPI/05/2-23-11-64-14/12 SN-I of January 11th, 2016**, in the case for issuance of an environmental permit, on November 27th, 2019, rendered the following:

DECISION

The lawsuit is dismissed.

REASONING

By the contested Decision of the respondent No. UPI/05/2-23-11-64-14/12 SN-I of January 11th, 2016, as stated in the introduction of the item 1. of the verdict, an environmental permit is issued for investor Brown coal mines "Banović," joint stock company Banovići, for the construction of thermal power plant Banovići (TPP Banovići) with installed optimal capacity 350MW of electric energy, or 790 MW of thermal energy on the land marked as cadastral parcels: 780/4777/5, 777/6, 777/7, 777/8, 777/9, 777/10, 777/11, and 777/12 in the cadastral municipality Banovići selo, municipality Banovići. The verdict of the contested Decision determined the location of the power plant for which the environmental permit was issued, what are the elementary raw materials, then measures to mitigate the negative effects during the use phase of TPP Banovići, limits for pollutant particles, monitoring system and annual reporting for plant and pollutant register, as its further specified in verdict of the contested decision.

By the lawsuit dated April 18th, 2016, 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 supplements and changes made to the Environmental impact assessment study for the construction of TPP Banovići No. 40/50. The investor delivered to the respondent supplements to the Environmental impact assessment study for the construction of TPP Banovići on October 29th, 2015, and on November 27th, 2015, plaintiff again raised objections, and in such way the plaintiff participated in the process of making the contested Decision, as an interested party. 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 January 11th, 2016. It was not until after the plaintiff's request for delivery of the contested Decision dated March 8th, 2016, that the respondent submitted the contested Decision to the plaintiff on March 19th, 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 respondent 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. By its submission from November 15th, 2017, the plaintiff notified the court that it upholds the statements made in lawsuit (in the manner that it was not changed by the Decision of the respondent No. UP-I-05/2-23-11-64/12 SN-I from September 29th, 2017); meaning that the plaintiff will not include in it's the lawsuit a new administrative claim.

In its response to the lawsuit from May 26th, 2016, the respondent pointed out the objection to the lack of active legitimacy on the part of the plaintiff and the objection to the timeliness of the lawsuit. Following the content of the response to the lawsuit, respondent upholds arguments pointed out in the verdict of contested Decision, because it considers the same to be correct and lawful. On October 4th, 2017, respondent informed court about Decision on modification of the environmental permit for the construction of thermal power plant Banovići (35 MWe 790 MWth) No. UPI/05/2-23-11-64-14/12 SN-I of January 11th, 2016. The respondent suggests that the court discard or dismiss the lawsuit as unfounded.

Interested party, and by its submission from August 8th, 2017 (the post office August 7th, 2017) and from October 24th, 2017, also pointed out the plaintiff's lack of active legitimacy and raised the objection of the lawsuit's timeliness, especially highlights the conducted mediation by the Secretariat of the Energy Community to the European Union in Vienna on July 27th, 2017 regarding the environmental permits for TPP Banovići and TPP Tuzla 7 and reached Agreement on mediation, according to which respondent will act in order to modify and adapt contested decision with the EU Directives, that have legal effect in B&H, and where the respondent on the basis of this Agreement issued a Decision modifying contested decision from January 11th, 2016, and for this reason considers lawsuit as inconsequential and objectless, and suggests 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 Brown coal mines "Banovići" joint stock company Banovići, **for the construction of hydroaccumulation "Ramići"**,¹ municipality Banovići, 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.

INSTRUCTION: Against this decision, appeal cannot be raised.

(stamp of the court)

J U D G E

Rada Bjeljic Delić

Signature of the judge

¹ Translation follows direct statement in the court's Decision, which in this part mentions "construction of hydroaccumulation "Ramići."" However, it should be noted that this is a grave typing omission made by the judge, as this case is about the issuance of the environmental permit for the construction of thermal power plant Banovići (TPP Banovići) with installed optimal capacity 350MW of electric energy.