

CASE nr. 17633/3/2013

ROMANIA
THE COURT OF BUCHAREST
SECTION IX contentious administrativ and fiscal
CIVIL SENTENCE nr. 3795
PUBLIC MEETING DATED: 02.07.2013
COURT CONSISTED IN:
PRESIDENT: Doina SEGARCEANU
REGISTRAR: Denisa Catalina ILIESCU

The solution to the request in administrative and fiscal case was to be found by the complaints of Greenpeace CEE Romania and Bankwatch Romania Association in contradiction with the defendants Gorj Environment Protection Agency and SC Oltenia SA-SDM Tg- Jiu Energy Complex - exploitation of Rovinari quarry mines, with the object of suspension of execution of administrative act.

The complainants, through lawyer Catalina Radulescu, with legal authority on the case and the defendant SC Oltenia Energy Complex SA, through legal adviser Bobei Vasile, who lodges legal authority on the case, answered the appeal filed by the court. The other parties are missing.

The Court of first Instance shall retain the case for further action.

THE COURT,

In respect of the case at hand, it retains the following:

By the application registered before that court under no. 17633/3/2013, the claimants of Greenpeace CEE Romania and Bankwatch Romania Association in contradiction with the plots of the environmental Protection Agency Gorj and SC Oltenia SA-SDM Tg-Jiu Energy Complex has requested the suspension of the implementation of the environmental agreement on the project the permanent removal from the forest fund of 130,80 ha land with forest vegetation, located in the forest Ole Targul Jiu, UP I Stramba, for the continuation of the mining of lignite within the licensing perimeter of the Pinoasa-exploitation Minera Rovinari career, published on 30.10.2012 on the website of APM Gorj.

In giving the reasons for the action, the complainants have shown that the requirement of the well-justified case is fulfilled, Since the misclassification in Annexs HG No 445/2009, since this is not only grubbing-up but also the expansion of lignite careers, it is not justified to implement the project of extending a coal career without having analyzed the impact of extending a quarry, no measures to compensate for grubbing-up work are foreseen, no urbanism certificate has been issued, no environmental impact assessment report is missing, no cumulative effects of the project

with other grubbing-up projects in the same area, effects on public health have been analyzed, On waters and protected sites and species, the provisions of the Aarhus Convention have also been breached by not providing documentation publicity. As regards the impending damage, it was mentioned that grubbing-up would achieve a lignite quarry without the approval of legal development.

In law, there have been invoked the provisions HG No 445/2009, of Act No 554/2004, and order 1284/2010, OEG 57/2007, order 19/2010, order 183/2002, Habitats Directive 92/43/EEC, birds Directive 2009/147/EC.

Legally cited, the defendants Agency for environmental Protection Gorj and SC Oltenia SA - Oltenia quarry Mining of Rovinari have submitted a welcome, by which they requested the rejection of the application as unfounded, on the grounds that all the relevant legal provisions were complied with when the environmental agreement was issued and that the conditions of article 14 of law no 534/2004 were not met.

A copy of the file has been attached, the environmental agreement and the documentation on which it was issued, proof of completion of the prior procedure, legal practice.

The tribunal will, when examining the documents and the proceedings in the file, have the following duties:

On 19.11.2012, The defendant the Agency for Environmental Protection Gorj issued environmental agreement No GJ-15 for the project for the permanent removal of 130,80 ha of forest land located in the Targu Jiu Forest Department, UP I Stramba, for the continuation of the mining of lignite within the licensing perimeter of mining, Pinoasa career-Rovinari-Pages 57-63.

According to Article 14(1) of Law No 554/2004, "in duly justified cases and in order to prevent imminent damage, on the basis of the application, under the conditions of Article 7, of the public authority which issued the act, the injured party may request the competent court to order the suspension of the enforcement of the administrative act until the court on which the document was drawn up has given its decision'.

In addition, pursuant to Article 15 (1) of the same legislative act, "the suspension of the enforcement of the unilateral administrative act may also be requested by the applicant by application to the competent court for the annulment, in whole or in part, of the contested act.";

It results, therefore, that - in order to suspend the execution of an administrative act - besides the requirement to initiate the procedure for the cancellation of the administrative act (which may be either in the preliminary administrative phase or in the judicial phase), it is necessary to cumulatively meet two others conditions: the existence of a well-justified case and the imminence of producing a damage that, thus, can be prevented.

The two conditions, by their restrictive-imperative tone, denote the exceptional character of the measure of suspension of the execution of the administrative act, assuming, therefore, the proof effective circumstances related to the administrative regime applicable to the contested act, which would be able to argue the existence of "a well-justified case" and "imminence of damages".

In this case, however, the arguments invoked by the applicants support the existence of the two legal conditions as deriving from the mere appearance of illegality of the administrative act whose execution is requested to be suspended, without

providing any evidence in this regard. Thus, the court cannot proceed to verify the claims of the applicants according to which the documentation considered by the authority at the issuance of the document whose suspension is requested would not be complete nor if the assessment made by it on the documentation is correct because, in the action aimed at suspending execution , they cannot be administered by scientific evidence.

However, in this case, it is found that the respondent Gorj Environmental Protection Agency issued the environmental agreement no. GJ-15 by virtue of their legal competences and following the analysis of the documentation submitted by the SC Oltenia Energy Complex SA - Mining Rovinari quarry, the project being subject to public debate, the file finding evidence regarding the publication of advertisements on the Internet, in the written press and at its headquarters, so that no lack of transparency can be imputed to it, and the issued document includes, in detail, the description of the project, the documents that were the basis for its issuance, the steps taken, the reasons for the agreement and the measures imposed for maintaining it.

Regarding the condition of preventing an imminent damage, which must consist, in the present case, in a circumstance determined by the issuance of the opinion, and not the issuance of the opinion itself, the court considers that the applicants have not proved its basis, the defendant SC Oltenia Energy Complex SA - Mining Rovinari quarry can proceed to clear the vegetation, under the conditions in which, according to disp. art. 11 paragraph 1 of GEO no. 195/2005 and art. 2 point 3 of the same normative act, the environmental agreement represents only one of the stages necessary for the realization of a project, prior to the issuance of other administrative acts, capable of effective execution. This aspect is evident from the content of the environmental agreement no. GJ-15, in which is shown the procedure to be followed in order to carry out the exploitation.

Thus, as from the acts and works of the file it does not turn out which is the well justified case and in what would be the imminent damage whose prevention is pursued by suspending the administrative act, the court, pursuant to art. 14 and art. 18 of Law no. 554/2004, will dismiss the action as unfounded.

**FOR THESE REASONS,
IN THE NAME OF THE LAW,
IT DECIDES:**

Dismisses the action regarding GREENPEACE CEE ROMANIA applicants based in Bucharest, no. 18, Eng. Vasile Cristescu Street, district 2, and the BANKWATCH ROMANIA ASSOCIATION with the headquarters in Bucharest, no. 41, Dinicu Golescu bd., bl 6, sc. 1, 1st floor, ap. 5, 1st district, in contradinction with the defendants AGENCY OF PROTECTION OF THE GORJ ENVIRONMENT with the headquarters in Targu Jiu, no. 76, Union Street, , Gorj county and SC OLTENIA ENERGY COMPLEX SA-SDM Tg. Jiu-Exploitation of Rovinari Career Mines based in Rovinari, no. 25, Energeticianului Street, Gorj County, as unfounded.

With right of appeal within 5 days of
communication.
Delivered in open court today, 02.07.2013.

PREȘEDINTE
Doina Segărceanu

For registrar in CO,
signs the chief registrar

Traducator autorizat,

