

ROMANIA
COURT OF ILFOV
CIVIL SECTION
CIVIL SENTENCE NO. 3531
PUBLIC MEETING ON 25 NOVEMBER 2013
COURT COMPOSED OF:
PRESIDENT - ALINA DUMITRESCU
REGISTRAR - MARIOARA RUSU

The trial of the appeal filed by the applicant BANKWATCH ASSOCIATION in contradiction with the defendants of ITRSV RM VALCEA and SC OLTENIA ENERGY COMPLEX is pending, whose object is to suspend the execution of the administrative act.

At the request of the parties documentary evidence was given.

Analyzing the entire evidences administered in question, the Court notes the following:

In fact, by decisions issued by ITRSV RM. Valcea under No. 8 / .2011, No. 8 / 31.03.2011, No. 6 / 01.30.2013, 134 / 12.19.2012, 131 / 14.12.2012, No. 127 / 11.26.2012, no .TPF 116 FPT / 15.10.2012, No. 33 / 03.04.2012, no.82 / 08.08.2012, No. 78 / 26.07.2012, 106 / 09.27.2012 and No. 93 / 09.04.2012 it was ordered that final set-aside and the grubbing-up of land of 1 ha each defendant owned by Oltenia Energy Complex, in order to achieve the objective „Expanding career Garla lignite exploitation ”.

It appears from the contested decisions that the basis for taking those measures was the operating license issued by ANRM approved by HG nr 421/2004, Notice of public consultation, environmental agreements No.GJ -22, 23, 24 and 25 of 22.04.2005 issued by APM Gorj (objective below), supporting memorandum, topographical lifting, favorable opinion of Tg- Jiu forest bypassing, owner's agreement, grubbing-up technical sheet including payment of the definitive removal fee (also on file).

According to Article 14 of Law No 554/2004/2004, the administrative litigation, in duly justified cases and in order to prevent imminent damage, is brought before the public authority which issued the act or the superior hierarchy authority under the terms of Article 7 of the same law, the injured party may request the competent court to order the enforcement of the unilateral administrative act to be suspended until the court on the substance has ruled.

According to Article 2 of. (1) point t of L. No 554/2004 is well justified cases the circumstances relating to the factual and legal situation which are such as to create serious doubts as to the legality of the administrative act and, in accordance with the second subparagraph of article 77(2), the imminent damage is the foreseeable and future material damage or, as the case may be, the case may be, serious disruption of the operation of a public authorization or a public service.

The Court considers that there is no doubt as to the legality of the decisions which are the subject of the present case, since: The area set aside by each decision is less than 1 ha, which entails the competence of the territorial inspectorates pursuant to Article 40(a) of L No 46/2008; proof of public consultation has been provided; The Oltenia Power plant is licensed to exploit lignite mineral resources in the Garla perimeter in 2004; the environmental agreements referred to in the decisions were not canceled in administrative proceedings; The special provisions contained in HG No 445/2009 which in Article 2(b)(I) specifies that the development consent represented by the decision of the competent authority or authorities entitles the holder of the project to be entitled to the building permit are not an incident to the provisions of Article 3(1)(e) of Law No 50/1991 to implement the project; this will be the following: (i) the building permit, for the projects referred to in Annex No 1 (the project of the defendant being included in item 19 of Annex 1).

The other points raised by that applicant as defendant at Complexul Ța proceed with slicing the project and carrying out environmental assessments on pieces of breaking the relevant internal rules, But also the practice ruled by the decisions of the European Court of Justice cannot be received and analyzed in the summary procedure governed by Article 14 of the Law no 554/2004, as it would mean a prejudice of the substance of the action in the annulment of the act administrative. Nor can it be checked by the present action even if the public consultation procedure complied with the Aarhus Convention to which Romania joined by Law No 86/2000.

The High Court of Cassation and Justice has consistently ruled that in a request for suspension it is not possible to stop the fund. By Decision No 06.10.2011 the ICCJ thus adopted the case in order to form the case thoroughly and justifiably required suspension of an administrative measure shall not be subject to review by the court the non-equality criticism on which the application for administrative cancellation is based itself, but it must limit its verification only to those obvious circumstances of fact and/or law which have the capacity to give rise to serious doubt as to the presumption of legality enjoyed by an administrative act.

Concluding the tribunal that the requirement of the good case is not met

justified by checking briefly the arguments put forward by the applicant in prism the incidental legal provisions are found not to be such as to create serious doubts as to the legality of the contested act. In relation to imminent damage, the court of first instance notes that the areas have already been grubbed up and excavated (according to the defendant's claim and the documents submitted in support of them - the contract for performance and the annexes thereto), that the extension of the existing quarry is concerned and that the applicant has not provided evidence that an action has been taken in the annulment of the contested decision.

The complainant's claim that a lignite quarry is a project with a major negative impact on the environment does not prove the imminence of the damage, since the administrative act enjoys a presumption of legality and truthfulness and the suspension of its execution constitutes an exception situation which occurs when the act of government enjoys a presumption of legality and truthfulness the law provides for it, within the limits and the conditions specifically regulated. In addition to the above, the Court finds that the cumulative requirements of Article 14 of Law No 554/2004 are not fulfilled, and it will therefore reject the application as unfounded. It is to be noted that the defendant of SC Oltenia Energy Complex SA reserved his right to claim court costs separately.

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

Rejects the request made by the applicant BANKWATCH ROMANIA ASSOCIATION with headquarters in district 1, Bucharest, no. 41 , BD. Dinicu Colescu, b1. 6, SC. 1, 1st floor, ap. 5 in contradiction with the defendant ITRSV RM. VALCEA RM. VALCEA, based in No 37, Carol I. County Valcea, SC OLTENIA ENERGY COMPLEX, based in Targu-Jiu, no. 5, Alexandru loan Cuza, GORJ County as unfounded. At the same time, the defendant of SC Oltenia Energy Complex SA reserved his right to apply for costs by separate means.

With appeal within 5days from communication.
Delivered in open session, today 11/25/2013.

President,
Alina Dumitrescu

Registrar,
Marioara Rusu

Compose. YES
Tehnored M.R /
5EX

