

FILE no. 3872/3 / CAF / 2014



ROMANIA
COURT OF BUCHAREST
SECTION II administrative and fiscal disputes
CONCLUSION
PUBLIC MEETING DATED 08.01.2015
COURT COMPOSED OF:
PRESIDENT: Doina SEGARCEANU
REGISTRAR: Adelina CIRMACEANU

The role is to solve the administrative contentious action having as object of annulment the administrative act-decision no.69 / 26.02.2012, no.19 / 20.03.2012, 59 / 30.05.2012, 114 / 09.10.2012, to annul the issued document of local public authorities formulated by the applicant Bankwatch Romania Association in contradiction with the parities Territorial Inspectorate of Forestry and Hunting Ramnicu Valcea and SC Oltenia Energy Complex S.A.

At the nominal appeal made in the public hearing, the applicant, through a lawyer, and the defendant S.C. The Oltenia Energy Complex S.A., through Bobei Vasile's legal adviser, with a delegation of representation on file, missing the defendant Territorial Regime Inspectorate of Forestry and Hunting Ramnicu Valcea.

The summoning procedure is legally fulfilled.

ROMANIA
COURT OF BUCHAREST
SECTION II administrative and fiscal litigations
CIVIL SENTENCE no. 683
PUBLIC MEETING ON 29.01.2015
THE COURT COMPOSED OF:
PRESIDENT: Doina SEGARCEANU
REGISTRAR: Adelina CIRMACEANU

The settlement of the administrative proceedings concerning an administrative act — Decision No 69/26.02.2012, No 20.03.2012/59, 30.05.2012/114, 09/ . 10.2012, sa — Annulment of an act issued by local public authorities formulated by the applicant Bankwatch Association in contradiction with the defendants the territorial Inspectorate of Forestry and hunting Ramnicu Valcea and S.C. Oltenia Energy Complex S.A.

The proceedings were held in public since 08.01.2015 when they were entered in the closing of the proceedings from the date of the meeting which is an integral part of the proceedings when the tribunal, in order to enable the parties to submit written conclusions on the case-file, has successively postponed its ruling on 15.01.2015, 22.01.2015 and 29.01.2015.

THE COURT,

Regarding the present cause, it retains the following:

By the application for legal action registered as an stent on 05.02.2014 under no. 3872/3/2014 the applicant Bankwatch Romania Association in contradiction with the defendants the territorial silvic regime and hunting Inspectorate Ramnicu Valcea and S.C. Oltenia Energy Complex S.A. requested the annulment of the following decisions:

19/20.03.2012, no. 69/26.06.2012, no. 59/30.05.2012, no. 114/09.10.2012, no. 112/08.10.2012, no. 105/20.09.2012, no. 101/19.09.2012, no. 99/18.09.2012, no. 940/04.09.2012, no. 92/27.08.2012, no. 91/23.08.2012, no. 90/16.08.2012, no. 89/14.08.2012, no. 8ci/13.08.2012, no. 83/09.08.2012, no. 80/06.08.2012, no. 75/19.07.2012, no. 73/17.07.2012, no. 71/13.07.2012, no. 53/28.05.2012, no. 49/16.06.2012, no. 32/27.03.2012, no. 31/27.03.2012, no. 13/16.02.2012, no. 9/14.02.2012, no. 6/07.02.2012 and no.2/12.01.2012 issued by

the defendant The territorial Inspectorate of Forestry and hunting Ramnicu Valcea for the benefit of defendant SC Oltenia Energy Complex.

In the reasons for the action, it has been shown by the applicant that the basis for the contested decisions is not the necessary legal acts or the environmental agreement (those mentioned in the decisions do not concern the project for which the forest is being cleared), Building permit according to Article 3 of Law no.

924/2011; it was noted that the contested decisions concerned the grubbing-up of an area of 22,5545 ha of forest, so according to article 40(b). From Law No 46/2008, the Government is the authority that approves its permanent removal from the forest fund, illegally attempting to split into lots of less than 1 ha, in order to delegate the approval. The plaintiff saw that another reason for the illegality of the decisions was that the public had no opportunity to participate in the decision, conf. Law No 52/2003; that the provisions of HG No 445/2009 have not been complied with because the environmental agreement was issued only for grubbing-up, without taking into account the expansion of the quarry but also its exploitation, no measures have been taken to compensate for grubbing-up works, Compulsory per Art. 37 of the Forest Code and there is no urbanism certificate for the land subject to deforestation.

Copy of the contested decisions and the prior complaint were attached to the application.

Legally quoted, the defendant SC Oltenia Energy Complex lodged a statement claiming the exceptions to territorial incompetence, prescription and lack of object, and, on the substance, asked that the action be rejected as unfounded.

In the reasoning for the claim, the defendant claimed that the applicant wrongly claimed that the environmental agreement and the building permit were missing, that the project fell within the scope of Annex 1, point 19, of Government Decision No 445/2009, that the project is the realization of a new lignite mining and that it would not have been a reality to compensate for grubbing-up works. Legal quote, the sin of the territorial inspection of forest regime and hunting Ramnicu Valcea raised a welcome by which he invoked the exception of non-shady, and, in substance, has requested that the action be rejected as unfounded. The documents on which the contested decisions were issued were attached.

At the 27.11.2014 deadline, the defendant SC Oltenia Energy Complex SA through legal adviser understood that he understood not to support the exception of territorial incompetence. At the same time, the court asked the applicant to file the stamp fee amounting to 50 lei for each end of the application, with the proof of its payment being found on the file 1084.

The document was accepted with documents.

With regard to the exception of the prescription, the tribunal is to reject it by noting that the applicant, as a third party, made the prior complaint on 05.07.2013, not filed by the issuer, page 1079, and the action was filed by post on 04.02.2014, sheet 37 back, that is, within the legal deadline of 6 months calculated from the expiry the time limit of 30 days within which a reply was to be made, as provided for in article 11 (1) (c) and article 2 (1) (h), of the law no. 554/2004.

The exception of the lack of object will also be rejected by the court which considers that the subject-matter of the appeal is in fact even if the measures adopted by the contested decisions have been enforced and the administrative acts are not ineffective.

When analyzing the documents and the proceedings of the file, the court has the following duties:

According to the device. Article 40(b) of the forestry code (Law No 46/2008), applications for permanent removal or temporary occupation of land from the forestry fund, under the conditions laid down in Articles 36 to 39, with the consent of the owner and with favorable approval of the forest management and forestry services, as appropriate, The National Forest Administration - Romsilva, in the case of land in the forest fund public ownership of the State, and the specialized territorial sub-units of the central public authority responsible for forestry, are approved by: (a) head of the central public authority responsible for forestry, for areas up to 10 ha, with the possibility of delegation of competence to the heads of the specialized territorial units of the central public authority responsible for forestry, up to 1 ha; (B) government, on a proposal from the central public forestry authority, for areas over 10 ha."

It appears from the preamble to all the contested decisions, with the exception of those No 19/2012, No 59/2012 and No 69/2012, that the documentation envisaged for their adoption also included the environmental agreement No GJ-02/10.03.2008, issued by the Gorj environmental Protection Agency, February 153-155, it appears from which the area of forest to be grubbed up for the purpose of "extending the exploitation of the Rosia de Jiu lignite" is 43,3745 ha.

The Court also notes that the total amount of land for which decisions on the permanent withdrawal of national forest land were issued in 2012 at the request of defendant SC Oltenia Energy Complex SA, in the light of environmental agreement No GJ-02/10.03.2008 issued by the Gorj Environmental Protection Agency, it is 21,6302 ha.

Given these findings, while, on the one hand, the environmental agreement No GJ-02/10.03.2008 refers to an area of 43,3745 ha, and, on the other hand, the majority of the contested decisions relate to a total area of 21,6302 ha, The General Court considers that the Government is the competent authority to rule on applications for the permanent set-aside of the property of the defendant SC Oltenia Energy Complex SA from the national forest fund in order to grub up for Extension of the exploitation of the Rosia de Jiu lignite, although she deposited in of the territorial Inspectorate of Silviculture and hunting Administration Ramnicu Valcea claims concerning areas below the 10 ha limit.

This is the conclusion reached by the court and because the defendant is beneficial of the contested documents you know from the beginning of the year on what area of land is to be and, expand the activity, so that the application for final removal from the forest fund regarding small areas was made precisely to avoid attracting the competence of the central authority, from the contents of the contested decisions stating that the applications were submitted either on the same day or in consecutive days, for example the decisions no. 2 and no. 6 regarding applications submitted on December 15, 2011, the decisions no. 9 and no. 13 concern applications submitted on 19.01.2012, no. 31 and no. 32 concern a single application filed on 08.03.2012, under no. 4288, the decisions no. 49 and no. 53 concern applications submitted on 02.04.2012.

For the reasons set out above, the court concludes that the final removal decisions from the contested national forest fund have been issued by an incompetent body, according to disp. act. 40 lit. b from the forest code (law no.

46/2008), quoted above so that it considers that they are illegal, and it is not necessary to analyze the rest of the arguments of illegality invoked by the applicant.

Consequently, pursuant to Articles 1, 8 and 18 of Law No 554/2004, the tribunal will admit the action and order annulment

no. 19 / 20.03.2012, no.
69 / 26.06.2012, m. 59 / 30.05.2012, no. 114 / 10.09.2012, no. 112 / 10.08.2012, no.
105 / 20.09.2012, no. 101 / 19.09.2012, no. 99 / 09.18.2012, no. 94 / 09.04.2012, no.
92 / no. 91 / 23.08.2012, no. 90 / 08.16.2012, no. 89 / no.
27.08.2012, 14.08.2012,
86 / no. 83 / 09.08.2012, no. 80 / 06.08.2012, no. 75 / no.
13.08.2012, 19.07.2012,
73 / no. 71 / 13.07.2012, no. 53 / 28.05.2012, no. 49 / no.
17.07.2012, 16.06.2012,
32 / no. 31 / no. 13 / no 9 / 14.02.2012, no.
27.03.2012, 27.03.2012, 16.02.2012, .

6 / 07.02.2012 and no. 2 / 12.01.2012 issued by the defendant of the territorial Inspectorate of Forestry and hunting Ramnicu Valcea for the benefit of the defendant SC Oltenia Energy Complex SA.

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

It rejects the exceptions of the prescription and of the lack of object.

Admits the action filed by the applicant BANKWATCH ASSOCIATION with its headquarters in district 6, Bucharest, no. 24, Boisoara, , ap. 2, Postal Code 060227, in contradiction with the defendants THE TERRITORIAL INSPECTORATE OF FORESTRY AND HUNTING RAMNICU VALCEA, located in Ramnicu Valcea, no. 37, Carol I Street, Valcea County and S.C. OLTENIA ENERGY COMPLEX S.A. with its headquarters in Targu Jiu, no. 5, Alexandru Ioan Cuza Street., Gorj County.

It orders the annulment of the decisions no. 19 / 20.03.2012, no. 69 / 26.06.2012, no.

59 / 30.05.2012, no. 114 / 10.09.2012, no. 112 / 10.08.2012, no. 105 / 20.09.2012, no. 101 / 19.09.2012, no. 99 / 18.07.2012, no. S40 / 09.04.2012, no. 92 / 27.08.2012, no. 91 / 23.08.2012, no. 90 / 16.08.2012, no. 89 / 14.08.2012, no. 86 / 13.08.2012, no. 85 / 09.08.2012, no. 80 / 06.08.2012, no. 75 / 19.07.2012, no. 75 / 17.07.2012, no.

71 / 13.07.2012, no. 53 / 28.05.2012, no. 49 / 16.06.2012, no. 32 / 27.03.2012, no. 31 / 27.03.2012, no. 13 / 16.02.2012, no. 9 / 14.02.2012, no. 6 / 07.02.2012 and no. 2 / 12.01.2012 issued by the defendant The Territorial Inspectorate of Forestry and hunting Râmnicu Vâlcea in the benefit of the defendant SC Oltenia Energy Complex S.A.

With recurs în 15 zile de la comunicare.

Pronunțată în sesiune publică, 29.01.2015.

PREȘEDINTE,
Doina Segarceanu

no

traducator autorizat,

REGISTRAR,
Adelina Carmaceanu



Red. DS

8.5.2015 / 5 Ex.