Case No 11855/3/2015

R O M A N I A

THE BUCHAREST COURT

SECTION II ADMINISTRATIVE AND FISCAL LITIGATION
CIVIL SENTENCE
Public meeting on 07.12.2015
Court composed of:
PRESIDENT: Alexandra Irina Gherghesanu
REGISTRAR: Denisa Catalina Iliescu

In court the trial of the administrative-fiscal litigation case regarding the applicants GREENPEACE CEE ROMANIA and THE BANKWATCH ROMANIA ASSOCIATION in contradictory with the defendants THE GORJ ENVIRONMENT PROTECTION AGENCY si SC COMPLEX ENERGETIC OLTENIA SA having as its object the annulment of administrative act.

At the nominal appeal made in the public meeting, within the list of postponements without discussions, the applicants are presented, through lawyer Radulescu Catalina, with the power of attorney at the file, the absence being the defendants.

THE COURT

By an action registered before the Bucharest Court on April 1, 2015 under number 11855/3/2015, the applicants OF GREENPEACE CEE Romania and Bankwatch Romania Association appealed to the defendants the Environment Protection Agency Gorj and the Oltenia Energy Complex SA because of the decision to be made order the annulment of the environmental agreement no 10/14 may 2014.

In its reasoning for its action, the applicant has indicated that the act is illegal because the environmental procedure is partially carried out, only for a related activity, in the deforestation of forest, while the main activity, the implementation of a 159,86 ha lignite mining is not at all assessed and is not covered by the environmental agreement. This complex project must be covered by the provisions of Annex 1, point 19, in conjunction with point 22 of HG 445/2009. The slicing of the project to extend a coal quarry is another ground for illegality, and the environmental assessment, indicated the complainant, had to be carried out for the main project otherwise in breach of CJEU case-law.

Environmental agreement, it argued that the complainant did not provide for measures to compensate for grubbing-up works.

There is no urban planning certificate for land subject to deforestation under Article 8 of order 1284/2010.

The cumulative effects of this project with other lignite-clearing/expansion projects in the same area and the direct and indirect effects under Article 5 of the 445/2009.

Lacks climate factor analysis although such a chapter is mentioned by the guide, the analysis of the impact on public health is missing, the impact on neighboring protected sites is not analyzed, the measures to restore the environment after closure of exploitation are not detailed, alternatives have not been analyzed, nor are any concrete measures to prevent impacts on groundwater and surface water foreseen. Protected species have not been identified or an appropriate assessment has not been carried out on them.

In the opinion of the complainant, The evaluation report does not comply with the guidance or requirements of order 863/2002.

The complainant also invoked the violation of the Aarhus Convention as regards the loss of its right to participate in the decision-making and to ensure transparent decision-making. The provisions of Law 554/2004, HG 445/2009 were invoked in law. Documents were annexd to the evidence of the action.

The defendant the environmental Protection Agency Gorj lodged an application on 23 June 2015 requesting the rejection of the action as unfounded.

The defendant SC Complexul energetiul Oltenia SA lodged an application on 29 June 2015, citing the exception of inadmissibility as regards the lack of administrative character of the contested act and the absence of a prior procedure for revoking the decision of the formal stage of admission. In the action it was requested to reject it as unsubstantiated.
In public session on 28 September 2015, the court dismissed as unfounded the exceptions invoked by the defendant, the legal and factual issues on which this decision was based were recorded in the conclusion of the meeting drawn up for that deadline.
The documents on which the contested act was issued were annexd to the case-file.
Examining the documents and the proceedings on the file, The Court of first Instance shall retain the founded character of the action:

In fact, the environmental agreement No GJ 10 of 14 May 2014, annexd to sheet 92 of the file, the Gorj environmental Protection Agency established the conditions and measures for environmental protection for the execution of the forestry sector (including deforestation) project. Of the 159,86 ha area of UP II the water valea and UP I grima" proposed to be located in Farcasesti village, jud. Gorj. The agreement itself States that the project consisting of the grubbing up of forest vegetation on the above mentioned area is necessary to continue the extraction of the Iignite within the licensed area of the Rosia career.

In the description of the project it was mentioned in essence that the identified perimeter is required for clearing and clearing the forest circuit in order to continue the works of exploiting the lignite in the Rosia de Jiu career. It is also mentioned in this first chapter of the environmental agreement that: 'whereas in jud. Gorj produces about 30% of the electricity required at national level, the syncops in supplying therinocytes with which would seriously disrupt the functioning of the national energy system, especially during cold or dry periods of the year. To eliminate the shortcomings, a continuous working front must be provided for heavy duty excavators. This is not possible without the forested land being permanently taken out of forest land and the deforestation of forest vegetation."

In essence, it was considered in the contested act that 'the continuation of lignite mining activity within the indicated perimeter is not possible without the permanent removal of land from the forest fund and deforestation their full.';

Tab 9 of the environmental agreement stipulated that the first condition to be observed is: 'carrying out works of exploiting lignite reserves strictly within the ANRM-approved perimeter'.
To rule on the legality and the merits of this environmental Agreement, In view of the criticisms made by the complainants alleging, first of all, that it is an error of its classification, i.e. a superficial assessment of the environmental effects of the actual and final project to be carried out, the General Court is to consider the documents on which it was issued, to give the parties the effectiveness of the parties' real intentions as reflected in the technical documentation.

In the view of the Court, in order to serve the purpose for which it is regulated, the environmental agreement being defined by the legislator as 'the administrative act issued by the environmental protection authority, setting out the conditions and, where appropriate, the measures for environmental protection, which must be observed if a project is carried out'. (Article 2(2) of the GEO 195/2005), the prerequisite for the legality of this act must be a correct and real identification of the project proposed by the investor, given that the full prospect of the project can be anticipated from the very beginning. Otherwise, the ultimate aim of environmental protection would easily be avoided by fictitious or only partial investment in the final proposed investment.

Thus, Notes the Court of first Instance in the technical and administrative documentation which based the contested act that in the technical memorandum made by SC BIOPTOP 2006 SRL and annexd to sheet 207 of the file it was expressly mentioned that the work was carried out in order to issue the decision on the stage of closure for final removal, Without equivalent compensation for national forest land, in an area of 159,86 ha, with the grubbing-up of vegetation on an area of 157,86 ha, with a view to achieving the investment objective "Opening and exploitation of the Rosia de Jiu lignite quarry, in the license perimeter.';

It is clear from this technical memorandum, but also from the impact assessment and environmental assessment report that the purpose of the eelesin and grubbing-up scheme is to open and exploit a lignite career (sheet 207 pet I).

Thus, it is clear from the reading of the technical memorandum in the description of the project that the application for the approval of the company is subsumed to its object of activity, i.e. to the exploitation of minerals 'in order to maintain and even develop the production capacity of the Rosia de Jiu quarry'.

Therefore, please note that the forestry set-aside was not an end in itself but merely a means of achieving the results listed in the respective technical memorandum page 3 (sheet 207 file): The possibility of achieving the lignite production necessary for the safe and secure functioning of the national energy system, the increase of the lignite production capacity, the rational exploitation of the limit targets.

In practice, to a large extent, the technical memorandum on which the environmental agreement was based deals with the issue of mining, the exploitation technology, the technological process of exploiting the lignite, excavating and mining, concluding that in order to carry out these processes it is necessary to initiate the final removal of the 159 ha land from the forest circuit and its deforestation.

As shown in the file notification sheet 218, the area covered by the environmental agreement is already included in the approved perimeter for the exploitation of lignite laid down in the ANRM operating license approved by HG 1293/2007, and its removal from the forestry system is simply a necessity, a first stage of exploiting lignite to ensure a constant and continuous working front for the investor.

The fact that the investment objective in is 'to open up to exploitation of the Rrosia de Jiu lignite quarry' and not simply to grub up for the purpose of harvesting wood, also shown in the technical sheet drawn up for the issue of the award stage decision and attached to sheet 220.

The environmental impact assessment attached to sheets 225 and following shows that the aim of the proposed project is to carry out the exploitation activity of the Rosia de Jiu career, the grubbing-up phase is only the first of the two proposed for deployment the final one being the exploitation of the geological extract (see folder tab 227).

Including the respondent public authority in its initial assessment decision No 4494/7 November 2013 and attached to sheet 138, the fact that the 159,86 ha area, including grubbing-up, was removed from the forestry system, it is a necessity as 'an early stage in the lignite exploitation process'. The report of the environmental impact assessment annexd to sheets 27 and following vol III analyzes precisely the environmental impact of the activity of the final removal of the 159 ha area from the forestry fund for the continuation of the lignite mining work, it is clear from its contents that the grubbing-up action itself is subsumed to an investment project the mine, the stages of this being: 1. Grubbing-up, 2. The exploitation of the geological extract.

Contrary to the express purpose and recognized by the investor himself for whom the land is requested to be released from forestry, by decision of the entry stage No 262/6 December 2013 attached to sheet 196 the public authority considers that the project is subject to environmental impact assessment, Falling within the provisions of Annex 2, points 1 (d) and 13 (a) of HG 445/2009.` 'Agriculture, forestry and aquaculture- afforestation of land not previously exlegislation forest vegetation or grubbing-up for land use change'.

In spite of this formal classification, even within this decision of the framing stage, the Authority mentions the consequences of the technological process of exploiting lignite (sheet 198). Thus, Notes the Court that, in total contradiction with the administrative documentation substantiating the issuance of the environmental agreement and the concrete purpose, anticipated and declared by the investor, the public authority of the respondent simply ignored the real purpose of the proposed project, by issuing a formal environmental agreement setting out environmental conditions and requirements valid only for one stage of the envisaged project.

In the view of the court, all the documentation shall show that the main project which will have an impact on the environment does not simply cover the depollution of 159 ha of land with forest vegetation for the purpose of changing the land use, It clearly aims at extending the lignite quarry in order to continue working on lignite within the licensing area of the Rosia quarry, and it is explicitly mentioned that this final activity is the means of eliminating the shortcomings/scops in the supply of coal to the Rovinari power plant and other industrial consumers.

The Court of first Instance shall, in relation to the parties' dispute concerning the correct classification of the project, take particular account of the scope of Directive 2011/92/EU of the European Parliament and of the Council, on the assessment of the effects of certain public and private projects on the environment which, in Annex I, the projects referred to in Article 4(1), Under point 19 'Careers and surface mining holdings where the surface of the site is above 25 hectares or, for peat bogs, 150 hectares' and in Annex II(D) the projects referred to in Article 4(2) 'Agricultural, forestry and aquaculture - initial tillage and grubbing-up with a view to conversion of the soil'.

At the same time, Subject to Article 2(4), the projects listed in Annex I shall be subject to an assessment in accordance with Articles 5 to 10. (2) subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project is to be subject to an assessment in accordance with Articles 5 to 10.[...]"

Whereas the text of HG No 2009 as amended by HG No 2012 also transposes the content of that Directive, The Court finds that the meaning of the concept of "grubbing-up for the purpose of land use change" provided for in Annex II(1)(d) to HG No 445/2009 has the same meaning as in Annex II(D) to the Directive, namely that of grubbing-up for the purpose of land conversion, understood as excluding the hypothesis proposed by the project under consideration in the pending case, which does not refer to the conversion of soil to change the category of use for agriculture, forestry or aquaculture, since the project is not intended for these fields of activity, but for the extractive industry, and the land subject to deforestation is not intended for conversion, but for lignite extraction excavation.

In this respect, it should also be noted that the documentation on which the agreement was issued often does not include the exploitation license No 3496/2002, which is the legal basis for the operation of the activity. In the view of the Court, this administrative act is once again proving that the principal project for the benefit of Oltenia Power plant IS mining, not deforestation for the purpose of agricultural, forestry or aquaculture activities, which is otherwise alien to its object, as well as the environmental impact assessment was required to be carried out with regard to the entire mining area and the activities to be carried out.

Moreover, the fact that the act is illegal in the light of the "slicing of the overall project". The Court of first Instance also takes into account the provisions of Article 5(3) of the 10.02.2010 methodology for the implementation of environmental impact assessment for public and private projects, approved by Common order No 135/84/76/1284/2010, issued by the Ministry of Environment and forests, Ministry of Agriculture and Rural Development, The Ministry of Administration and Internal Affairs and the Ministry of Regional Development and Tourism, according to which "in the event that an investment is phased out or located on land situated within the territorial range of several neighboring territorial-administrative units, the environmental impact assessment shall be carried out for the whole investment".

As such, it appears that the obligation of the defendants to be subject to environmental impact assessment procedures the whole main project, which falls under Annex I, point 19, of the Government Decision No 445/2009 — 'Pit-head and surface-mining holdings, where the surface of the site exceeds 25 hectares or, for the extraction of peat, where the surface of the site exceeds 150 hectares`, also taking into account the provisions of pet. Article 22 of Annex No 1, where "any modification or extension of projects listed in this Annex" shall also apply. Compared with the express provisions of Article 22 of Annex 1 to the UG 445/2009, it appears irrelevant to the claim of the public authority that it would not have been possible to include the project in point 19 of the same Annex because the company had the construction permit before 1989 at the same time, the expansion of lignite mining beyond the 25 ha threshold.

Consequently, the Court points out that the environmental impact assessment procedure had to be carried out in full, complete and complex terms for the correctly-classified PET project. In accordance with Article 19 of Annex I, taking into account its main activity (surface mining) and all related activities, it is necessary to assess the cumulative effect that all these activities can have on the environment.

Relevance is also the case-law of the CJEU in this area.

Thus, in judgment No C-2/07 of 28 February 2005 in the Abraham case and others against the Wallonne Regionale, cited by the complainants, paragraph. 26 and 27, the CJEU held that "where national law provides that the authorization procedure is to be carried out in a number of stages, the assessment of the environmental effects of a project must in principle be carried out in a separate manner. Be carried out as soon as it is possible to identify and assess all the effects that this project might have on the environment (see judgment of 7 January 2004, Wells, C-201/02, ECR 1-723, paragraph 53). Thus, where one of these steps is a main decision and the other is an implementing decision which cannot exceed the parameters set by the main decision, the likely environmental effects of the project must be identified and assessed in the main decision-making procedure.

The assessment should be carried out in the procedure for the adoption of the enforcement decision only if those effects are identifiable only in the latter procedure (the Wells judgment, cited above, paragraph 52). 27. Finally, it should be recalled to the referring court that the purpose of Regulation could not be diverted by splitting projects and that failure to take account of their cumulative effect should not result in their total circumvention of the obligation to assess, although the Taken as a whole, they could have significant effects on the environment within the meaning of Article 2(1) of Directive 85/337 (see, in this respect, judgment of 21 September 1999, Commission v Netherlands, C-392/96, ECR, p.1-5901, paragraph 76)."

It follows from this case-law that the objective of the Regulation on the evaluation and authorization of projects with an environmental impact must not be diverted by a splitting of projects, and failure to take account of their cumulative effect should not result in their virtually excluding them from the assessment obligation in full, although taken as a whole, They are likely to have significant environmental effects within the meaning of Article 2(1) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, which has been repealed by Article 14 of Directive 2011/92/EU of the European Parliament and of the Council, On the assessment of the effects of certain public and private projects on the environment, the text of the latter Directive stating that "references to the repealed Directive shall be construed as references to this Directive", Which necessarily entails the full applicability of the interpretation of the Court of Justice, the date of the objective of the Regulation on the evaluation and authorization of projects having an environmental impact.

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Consequently, it can reasonably be considered that the design of the project subject to the environmental impact assessment in this case was liable to violate the principles enshrined in both EU and domestic law, Thus placing the defendants in the event of circumvention of the legal obligations arising from the classification of the project into Annex 1 to HG No 2009 in order to avoid making this complex project subject to development approval under Article 2(B)(i) of the Government Act No 2009 defined as "the decision of the competent authority or authorities, which entitles the project holder to: (i) the building permit, for the projects referred to in annex no 1 and those referred to in annex no 2 (1) (a), (c), (e) and (f), and points 2 to 13;"

The company has superficially considered that the procedure laid down in Article 2(b)(iv) of the Government Decision No 445/2009: "(iv) Decision of the Chief Inspector of the territorial forestry and hunting Inspectorate is applicable to the land in question, order of the head of the

central public authority responsible for forestry to approve the temporary occupation or permanent removal of land from the non-agi forestry fund, as appropriate, for the purpose of obtaining objections involving grubbing-up for the purpose of land use change, as referred to in annex no 2 (1) (d);" expressly stating in the welcome (tab 172 vol 1) that this would be the development approval and not the construction authorization.

It appears thus evident from all the appearances put forward by the defendant that in reality the reasoning underlying the classification of the project into the Government Decision No 445/2009 Annex 2(1)(d) " Agriculture, forestry and aquaculture- point d. afforestation of land on which no forest vegetation or grubbing-up had previously existed for the purpose of land-use change' considered exclusively the real intention of the beneficiary defendant to extend the extraction of lignite in a grid operating before 1989, As it said, without being subject to the separate procedure, the projects listed in Annex 1 to HG nr.445/2009.
The appreciation of the plots, such as the permanent grubbing-up of the various areas of forest vegetation with a clear purpose for excavation of land, it would be equivalent to a grubbing-up for purpose
the 'conversion of the soil' appears thus absurd and deliberately limited, since the excavation work soil and coal extraction have nothing to do with soil conversion, which refers to activities specific to agriculture, forestry or aquaculture.

Moreover, contrary to the claims of the defendants, the correct classification of the project in Annex No 1, point 19 to HG No 445/2009 is demonstrated by the corroboration of the procedure provided for in Article 2(b)(I) of the Government Decision No 445/2009 — which requires the construction permit to be issued for projects listed in Annex No 1 — And the provisions of Article 3(1)(e) of Law No 1991 which require the execution of civil, industrial, agricultural and industrial constructions for the support of technological plant and equipment, for infrastructure of all kinds or of any other nature "only in compliance with the building permit, as well as with the regulations governing the design and execution of construction works, in order to: [...] drilling and excavation work necessary for the carrying out of geotechnical studies and geological surveys, the design and opening of quarry and ballasting operations, gas and oil wells, and other surface or underground workings;[...]'

It is thus becoming obvious that, By circumventing the obligation to evaluate the environmental impact of the entire investment, which concerns the main activity of exploiting the lignite quarry within the Rosia area. Not only the related, small-scale activity of permanent removal of 159 ha of forest land from the forestry fund, The administrative act imposing mandatory environmental protection conditions and measures when carrying out the project did not analyze the cumulative effects of the project with other lignite grubbing-up/expansion projects in the same area, nor did it analyze the direct and indirect effects, as provided for in Articles 5 and 11 of HG No 445/2009, In this respect, the argument that there exists in the Rovinari area, in addition to 17 other careers mentioned in the address of tab 35 vol I including the Pinoasa career, cannot be ignored. Located in the immediate vicinity of Rosia and extending itself to a few hectares as shown in the sheet annexed to tab 1 61 vol I.

A formal limitation on the effects of the first phase of the project, i.e. the grubbing-up phase, clearly led to a complete disregard of the analysis of the environmental effects of the second phase of the project, namely the exploitation of the lignite quarry.
In these circumstances, it is entirely correct that the complainants argue that the cumulative impact of this extension on the environment is not analyzed in any way in the technical and administrative documentation supporting the environmental agreement under review and therefore does not impose any environmental protection measures and conditions, Specific to the nature and the real effects of the integrated investment project, although in reality it is considered as a whole, and not only the grubbing-up project, will have significant environmental impacts within the meaning of Article 2(1) of Directive 85/337, current Directive 2011/92/EU of the European Parliament and of the Council, on the assessment of the effects of certain public and private projects on the environment.

In the same manner, the General Court retains the Regionales for the interpretation of the obligations of the States imposed by those Directives, as follows from the case-law of the Court

of Justice in the 10.12.2009 judgment in case C 205/08, Umweltanwalt von Karnten vs. Karntner Landesregierung: ‘in addition, Member States must ensure that Directive 85/337 is implemented in full compliance with the requirements which it requires, taking into account its essential objective, as set out in Article 2(I), which is to ensure that before an authorization is granted, Projects which may have significant environmental impacts, on the basis of, inter alia, nature, a1 of their size and location, are subject to an assessment of their effects (see the judgment of the Ecologistas en Acción-CODA, cited above, paragraph 33).”

On the other hand, the Court held that the objective of Directive 85/337 cannot be misused by dividing up a project and that failure to take account of the cumulative effect of several projects must not result in their total circumvention of the assessment obligation, since, in particular, the fact that the project is not subject to the obligation to carry out the evaluation, Taken as a whole, they could have "significant environmental effects" within the meaning of Article 2(1) of Directive 85/337 (see the judgment of Greening en Acción-CODA cited previously, point 44).”

The defense of the defendant public authority according to which the project would not have been ‘sliced’ since it relates only to the project of removing the 159 ha area from the forest circuit, with the company having a building permit before 1982 and executing works 394/1979, it is at least contradictory that the very reference to these authorizations which undeniably refer to mining demonstrates that the authority was fully aware of the case as to the true purpose envisaged by the beneficiary to solcify the issuance of the environmental agreement.

The Court also notes that the complainants’ argument concerning the absence of an urban planning certificate for land subject to grubbing-up, as provided for in Article 8(1) of the 10.02.2010 methodology for the application of environmental impact assessment for public projects, and approved by Common order No 135/84/76/1284/2010, is also relevant, According to which "in order to carry out the initial assessment phase, the project holder requests the issuance of the environmental agreement with the county authority for environmental protection, by submitting a notification of the intention to carry out the project, accompanied by the urban planning certificate issued under the terms of the law on the authorization of construction works, the plans attached thereto and proof of payment of the tariff for this phase.’;

In this respect, it should be recalled that the urban planning certificate constitutes within the meaning of Article 6 of Law No 1991 the information act by which the local authorities, in accordance with the provisions of the urban planning and related regulations or spatial planning plans, where appropriate, approved and approved in accordance with the law, make known to the applicant the elements of the legal regime, economic and technical requirements of the land and buildings existing at the time of the request and establish the urban requirements to be met according to the specific site, as well as the list of legal notices and agreements required for the authorization.

Thus, it could not be accepted that the project for which approval was requested would not require prior knowledge and verification of the conditions relating to the legal, economic and technical arrangements for land and buildings existing at the time of the request, as well as the town and country requirements to be met on the basis of the specific nature of the site, in the absence of which it is foreseeable that the loss of legitimate rights or interests of the citizens and the territorial administrative units concerned will be prejudicial, not just to the protection of the environment, but also in terms of carrying out the construction works in the whole of the lignite quarry.

Paradoxically, responding to these illegality criticisms, defendant S.C. THE ENERGY COMPLEX OLTENIA S.A., although it claims that under this project it does not carry out construction works, it invokes in its defense (tab 172 vol 1) The fact that for the issue of the environmental Agreement, the authorization was submitted for the execution of works no. 394/12.09.1979 issued by the Gorj County People's Council, 'for the purpose of carrying out the mining work', obtained at the time the works started and valid for the entire period of execution of the investment.

It is therefore concluded that, although the beneficiary defendant excludes the grubbing-up activity as a component of the activity which is practically the subject-matter of its activity — exploitation of lignite reserves, on the other hand, it takes precedence in supporting the appearance of the legality of the procedure for issuing the environmental agreement precisely by the act of authorizing the execution of the works of opening and operating the lignite quarry in question, once

again, it is totally inconsistent and confused in the development of judgments and appearances.

Pursuant to Article 7(13) of Law No 50/1991 (form in force on the date of issue of the contested act), "Respecting the legislation on the assessment of the environmental impact of certain public and private projects", if changes occur for which a separate building permit is required to be issued for the organization of the execution of works, it shall be issued only if the competent environmental protection authority finds that the modifications made are within the limits of the previous administrative act. If this is not the case, the competent authority for environmental protection shall reassess the effects of the basic works and of the organization of the execution of the works and issue a new administrative act.";

In the same context, as for the approval of the grubbing-up project undertaken by the defendant, the authorization procedure provided for in Article 3(e) of Law No 1999 remains, for the execution of works which actually organize the operation of lignite reserves, the issue of a new urban planning certificate and then a new building permit with this object are mandatory stages, which cannot be replaced by the mere submission of a building permit for quarry operation, the principle of non-retroactivity of civil law confirming precisely the legal rationale of the obligation to obtain a new authorization to carry out excavations necessary for the opening of quarry and ballasting operations, gas and oil wells and other surface operations.

Finally, criticism to initiate that the contested environmental agreement does not provide for measures to compensate for the grubbing-up work designed and declared is also to be considered as relevant, in disagreement with the imperative rule provided for by Article 37 of the Code Act No 46/2008 on the Forest Code, thus: (1)

Only on condition that they are compensated for, without reducing the forest area and paying advance of the financial obligations, may be definitively taken out of the national forestry fund only the land necessary to achieve or extend the following categories of objectives: (A) necessary for the exploration and exploitation of the following mineral resources: coal, beneficial rocks, mineral aggregates, ores, mineral waters, alternative energy sources, oil and natural gas; (...) (3) the compensation provided for in paragraph 1 paragraph 1 shall be physically carried out on land having five times the value of the land permanently set aside from the forestry fund and the area of the land set aside may not be less than three times the area of the land to be set aside. The land for which the compensation referred to in paragraph 1 is made shall be only from outside the national forestry fund, but adjacent to it, suitable for afforestation. Where the minimum area of a clearing field is greater than 20 ha, it may not be adjacent to the forest fund but shall be compact. It is not possible to make a compensation for land located in the Alpine and subalpine areas.

For the land referred to in paragraph 4, registration in forestry facilities and administration or forestry services shall be compulsory within 30 days of the date of approval of permanent removal from the forestry fund, as well as afforestation in up to two growing seasons. Compensation for land adjacent to protective forest curtains shall not be permitted. (7) in counties where the forest area is less than 16 % of the county area, the compensation shall be made only with land within the same county.';
The defendant public authority has invoked the fact that compliance with these legal provisions does not fit them.
The Court cannot share that view because it is a purely formalistic one and concerns a stage after the environmental agreement was issued. The competent authority in the environmental donation had, of course, to be concerned about the environmental effects, including from the compensation perspective.

In his defense, the beneficiary defendant contended that: He benefits from the exception provided for in Article 36 Forest Code, that the procedure for clearing grubbing-up works is provided for by the methodology for establishing the equivalence of the value of land and for calculating the monetary obligations for final removal from the forestry fund, Since 17 February 2011, approved by order M.P. No 924/2011, which provides for the legal possibility of paying a definitive discharge fee from the national forestry fund without compensation for other areas of land in return; The fact that Article 41 of the Forestry Code establishes only monetary obligations for permanent removal from the forest fund in the case of works of national interest of public utility; the fact that in the technical documentation related to the project, they provided for works to restore the site at the completion of the investment and that once the exploitation quotas are reached the land will be returned to the productive circuit by afforestation.

Having examined these arguments on a point by point, the Court of first Instance notes that,

pursuant to Article 41 of Law No 468/2008 on the Forest Code, invoked by the defendant, "(L) for land set aside permanently from the forestry fund, in the cases provided for in Articles 36 and 37, the Bănănești's obligations are as follows: (a) a fee for the final removal of land from the forestry fund, payable in advance of the issue of the permanent removal approval and deposited in the forest land improvement fund at the disposal of the central government responsible for forestry; (b) the consideration of land permanently taken out of the forest fund, payable to the owner of the land for private property of natural, legal or public property of the territorial administrative units, and for land publicly owned by the state, to the forest administrator public property of the state, and to the forest conservation and regeneration fund; (c) the consideration of the loss of growth caused by the timber extraction before the age of the technical exploitation, which is paid to the owner of the land for private property of natural, legal or public property of the forest-territorial units, and for publicly owned land of the state, to the forest administrator publicly owned by the state, income from the forest conservation and regeneration fund; d) the consideration of the decommissioned objectives; in the case of publicly owned forests, it shall be paid to the administrator and for the other forest property categories shall be paid to the owner; (e) costs of installing forest vegetation and maintaining it until the state of the massif is achieved, only in the cases referred to in article 36 (1) (a) the amounts referred to in paragraph 2 and in article 37(1) shall be deposited in the forest conservation and regeneration fund. The monetary obligations referred to in paragraph 1 (b) to (e) shall be paid in advance of the receipt of the land set aside."

It is obvious that all the two-day obligations provided for by Article 41 of the Forest Code distinct from the obligation of compensation (financial or in kind), and are cumulative, moreover, with this.

The applicant has not provided evidence that he would qualify for the exception provided for in Article 36(2) forest code for the purpose of paying the consideration for the land taken out of the forest fund in order to be exempt from compensation for equivalent land.

Moreover, it follows from the minutes annexd to sheets 19 and 23 vol 111 that the authority, while in the discussions it provided for the need for compensation in kind, has not, in the end, been satisfied with this condition.
At the same time, It is noted that the so-called "works to restore the site upon completion of the investment" and to restore land to production by afforestation after reaching the exploitation rates, which the technical memorandum to the decision of the initial evaluation stage contains, can be regarded as illusory and superfluous in the most easy way, with no connection to the foreseeable real situation of land undergoing excavation work sine die, for which the restoration of the site and the restoration of the productive circuit through land could not be achieved in the next 50 years as compared to the effects of the extractive industry on the soil.

The Court of first Instance will not consider the applicant's arguments as being based on the lack of transparency in the decision-making process, documents annexd to the file by the defendant authority, sheets 6 to 16 proving to the contrary.

For all the preceding considerations, having regard to the provisions of Articles 1(1) and 8(1) of Law No 554/2004 and Article 8(1) textual I of Law No 554/2004, The Court of first Instance shall annul the administrative act of the legality check.

FOR THESE REASONS
IN THE NAME OF THE LAW
IT DECIDES

Accept the action brought by the complainants GREENPEACE CEE ROMANIA, based in district 2, Bucharest, no. 18, ENG.VASILE CRISTESCU STREET, and BANKWATCH ASSOCIATION ROMANIA, based in district 6, Bucharest. No 24, BOISOARA STREET, ap. 2 against THE ENVIRONMENTAL PROTECTION AGENCY GORJ with its headquarters in TG. JIU, no. 76, UNION STREET, GORJ county and SC OLTENIA SA ENERGY COMPLEX with its headquarters in TG.JIU, no 5, ALEXANDRU IOAN CUZA STREET, County GORJ.

Cancel the environmental agreement no. 10/14 in 2014. To act that no trial expenses were claimed.

With a right of appeal within 15 days of the date of the joint decision.

The appeal shall be lodged at the Bucharest Court of first Instance.

Delivered in public today, 07.12.2015

Registrar, **Președinte**
Alexandra Irina Gherghesanu **Denisa Catalina Iliescu**

Red. jud. AU — 6 ex.

Traducator autorizat,