

DECISION

No. 4239

Sofia, 20 April 2006

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Division, in a court sitting on the thirteenth of March in the year two-thousand and six, in a panel composed of:

PRESIDING JUDGE: VANYA ANCHEVA

PANEL MEMBERS: YULIA KOVACHEVA, VIOLETA GLAVINOVA

in the presence of court stenographer Iliana Ivanova, and with the participation of prosecutor Elena Encheva, heard the report by Judge YULIA KOVACHEVA on Administrative Case No. 10628 of 2005.

These proceedings were held pursuant to Art. 33 *et seq.* of the Supreme Administrative Court Act (SACA).

The case was initiated by a cassation appeal by the minister of the environment and waters against the decision of 18 July 2005 by the Sofia City Court on Administrative Case No. 3138/2004. The appeal presents arguments about the incorrectness of the judgment and asks for its repeal.

The respondent, the Ecological Association For the Earth, through their legal representative, expressed the viewpoint that the cassation appeal was unfounded and requested that the appealed decision be left in force.

The prosecutor from the Supreme Administrative Prosecutor's Office gave a motivated argument for the unfoundedness of the cassation appeal.

The Supreme Administrative Court, Fifth Division panel, found that the cassation appeal was procedurally permissible since it was submitted within the timeframe given in Art. 33, Para. 1 of the SACA by the proper party. Examined on its merits, it is unfounded for the following reasons:

In the decision now under appeal, the Sofia City Court overturned Decision No. 53/22 July 2004 by the head secretary of the Ministry of the Environment and Waters in the part that refused to provide access to public information according to the request Reg. No. 1249/09 July 2004 by the EA For the Earth and returned the file, requiring him to provide access to the requested information. In the case under examination, the complainant in the court of first instance (now the respondent in the cassation appeal) asked to be provided with the following: 1) a copy of the protocols from public discussions; and 2) viewpoints represented by participants in public discussions about various projects during the period of 1999-2004, described in appendix No. 1 to the request. The administrative body refused the request on the grounds of Art. 37, Para. 1, Item 1 and Item 2 of the APIA, in the case of Item 1 claiming that the documents were preparatory acts for decisions on Environmental Impact Assessments (EIA) and did not have independent significance, thus, according to Art. 13, Para. 2, Item 1 of the APIA access to them is restricted. Concerning materials under Item 2, [the refusal claimed that] the information contained in them concerned the interests of third parties and that it was necessary to obtain their written consent; in any case, they also did not have independent significance. Given these factual circumstances, the court pointed out that the system and conditions for providing access to information about the environment is regulated by the Environmental Protection Act (EPA), which is a specialized law with respect to the more general

Access to Public Information Act. Art. 20 of the EPA lists the concrete grounds for a refusal to access this requested information about the environment and excludes the application of the provisions in Art. 37 of the APIA, which sets out the hypotheses for refusals under the latter law. The obliged subject did not discuss whether the elements of some of the factual components of Art. 20 of the EPA were fulfilled, which would have provided the grounds for a possible refusal to access to information about the environment. Instead, the refusal unlawfully referred to the provisions in Art. 13, Para. 2, Item 1 of the APIA, ignoring the specialized text in Art. 102 of the EPA, which reads that the MEW must maintain a register of data about the fulfillment of EIA procedure, including about public discussions and decisions issued on EIA, and until the creation of such a register through a specialized order by the minister of the environment and waters, it provides a system for the preservation and presentation of such information.

Unsatisfied with the decision, the cassation appellant claims that the court's decision about the inapplicability of the grounds for the refusal based on the APIA is not applicable in the evaluation of request for access to public information related to the environment, citing provisions in Art. 26, Para. 1 of the EPA, which refer back to the procedure in the APIA. The arguments are once again made that in contrast to the findings of the court, the information is related to the operative preparation of acts and does not have independent significance; in addition, it contains the opinions and positions of third parties with respect to the realization of projects for the protection of the environment, i.e. there are grounds for restricting access to the requested information under Art. 13, Para. 2, Items 1 and 2 of the APIA, according to which the obliged subject has lawfully refused access to the information under the hypotheses in Art. 37, Para. 1, Item 1 and 2 of the APIA.

The decision is correct.

Art. 19 of the EPA offers a definition of "information about the environment," which includes in its scope both information about components and factors that influence and define the state of the environment, as well as a wide sphere of activities and circumstances connected with human health and safety, people's living conditions and so forth, insofar as they are or could be affected by the state of aspects of the environment. The right to information, examined in the context of citizens' basic right to a favorable and healthy environment, which is proclaimed in Art. 55 of the Constitution of the Republic of Bulgaria, can be restricted only in cases pursuant to Art. 20, Para. 1, Item 1 - Item 6 of the EPA. In the appealed refusal, the administrative body did not cite any of the factual elements of the applicable legal norm, but rather assumed that it had fulfilled the prerequisites pursuant to Art. 13, Para. 2, Item 1 and Item 2 of the APIA. As the ruling court correctly held, the refusal was unlawful, since the request was not related to the operative preparation of acts - decisions on EIA, in the sense of Art. 13, Para. 2, Item 1 of the APIA. In order to be devoid of independent significance, the requested information must constitute in and of itself an opinion, recommendation or viewpoint prepared by or for the body and intended as preparation for the adoption of a corresponding final act. Public discussion held within the framework of the EPA is an independent stage in the procedure for making a decision on an EIA by the competent body; for this reason, the composite protocol for such a discussion does not have the characteristics of a preparatory document prepared by an assisting body with a view to the issuance of a final act. The protocols from public discussions reflect the publicly expressed viewpoints and positions of the participants. Given that the information in question is public in character, considering the purpose of its creation and the method of distribution, the obliged subject's argument that providing it to the seeker would harm the interests of third parties who had not given their consent is unfounded and does not find support in the legislation. Once certain information has become publicly known and does not fall within any of the restrictive hypotheses in Art. 20, Para. 1 of the EPA, the right of access to it cannot be restricted due to the need to protect competing interests - the right to protect personal information in the sense of Art. 6, Item 5 of the APIA. Access to public information about the activities of the administration guarantees citizens the possibility of forming an adequate idea

and a critical viewpoint about the bodies that govern them; for this reason, the grounds for refusal are limited to the framework of restrictions on the right of access regulated in the applicable law. Given that the provisions in Art. 102 of the EPA define the principle of the public nature of information related to EIA procedure, including public discussions, citizens and organizations' right of access to information related to decisions that affect the environment cannot be restricted except for in the cases referred to in Art. 20 of the EPA. The provisions in Art. 26, Para. 1 of the EPA exclude other legal sources as grounds for refusal of information requested by a seeker, since it refers to the procedure stipulated in Chapter Three of the APIA for the provision of access to public information, but not to the material-legal requirements for refusal regulated in the general law.

Given the aforementioned arguments, the decision under appeal is correct and must be left in force.

Guided by the considerations above and on the basis of Art. 40, Para. 1 of the SACA, the Supreme Administrative Court, Fifth Division panel,

HEREBY RULES:

TO UPHOLD the decision of 18 July 2005 by the Sofia City Court on Administrative Case No. 3138/2004.

The decision is not subject to appeal.

True to the original,

PRESIDING JUDGE: (signature) Vanya Ancheva

PANEL MEMBERS: (signature) Yulia Kovacheva, (signature) Violeta Glavinova