

Court Decision No. 5550
Sofia, 11.09.2023

IN THE NAME OF THE PEOPLE

ADMINISTRATIVE COURT - SOFIA-City, Second Department, 31 panel, in a public session on 24.04.2023 with the following participants:

JUDGE: Veselina Zhenavarova

with the participation of the secretary Rozaliya Radeva, considering case number 6134 according to the inventory for 2020 reported by the judge, and in order to rule, took into account the following:

The proceedings are under Art. 145 et seq. of the Code of Administrative Procedure (CAP) in conjunction with Art. 99, para. 8 of the Law on Environmental Protection.

By decision No. 7560/16.06.2020 under administrative case No. 12754/2019 of the Supreme Administrative Court-Sixth Division, decision No. 1631/12.03.2019, issued under administrative case No. 9070/2015 according to the inventory of the Administrative Court of Sofia-city, was annulled, and the case was returned to the same court for a new examination by another panel. The case was initiated by complaints from V.V.K., National Association for the Protection of Property Owners, Association "Sustainable Development Coalition", Association "Independent Public Control" and Ecological Association "Za Zemiata" against Decision on environmental impact assessment No. SO-03-03/2015, dated 28.08.2015 of the Director of the Regional Environmental Inspection - Sofia, which approves the implementation of an investment proposal (IP) for "Construction of a plant for combined energy production in Sofia with the utilization of RDF (Refuse Derived Fuel) waste" on site TEC Sofia in land property with identifier 68134,511.4, Serdika district in Sofia municipality, with the contracting authority "Toplofikatsia Sofia" EAD.

In this court hearing the complainant Environmental Association "Za Zemiata", represented by Lawyer K. and Lawyer V. and in a written defense submitted by them, supports the complaint. The costs incurred in the court proceedings are claimed.

The complainants V.V.K., National Association for the Protection of Property Owners, Association "Sustainable Development Coalition", Association "Independent Public Control" did not send representatives to this court hearing, in which the case was heard in substance, and do not commit opinions.

The defendant in the complaint, the Director of the Regional Inspection for the Environment and Water - Sofia, through Lawyer M. and his legal representative director of the Legal Department N. S. in this court sitting, and in the written notes presented in the case, contests the appeals, presenting reasons for their unfoundedness and for the legality of the issued administrative act. Interested party, "Toplofikatsia Sofia" EAD, through Lawyer D. in this court sitting and in a submitted written opinion, sets out considerations in support of the contested administrative act.

Interested party, Sofia Municipality, through Lawyer D., considers the arguments of the applicants unfounded. The court, after taking into account the mandatory instructions given in decision No. 7560/16.06.2020. according to administrative order No. 12754/2019 of the Supreme Court of Appeals-Sixth Department and assessed individually and collectively the evidence collected in the case, including the heard expert opinions, by discussing the

arguments and opinions of the parties and by carrying out in accordance with Art. 168, para. 1 of the CAP, a comprehensive review of the legality of the contested administrative act on all grounds under Art. 146 of the CAP, established factually and legally the following:

The subject of the disputed decision on environmental impact assessment is the approval of an investment proposal (IP) with the contracting authority "Toplofikatsia Sofia" EAD for "Construction of an installation for combined energy production in Sofia with the utilization of RDF (Refuse-Derived Fuel) waste" on site Toplofikacia Sofia in land property with identifier 68134.511.4, district S. The installation is the third phase – part of the Integrated System of Household Waste Treatment Facilities of the Municipality of Sofia, providing for the utilization of mainly RDF (Refuse-Derived Fuel) waste resulting from the operation of the Mechanical and Biological Treatment plant with the production of RDF waste-fuel on Site Sadinata at Yana Station.

The investment proposal under the process decision concerns the construction of an installation for the use of modified solid fuels obtained from waste (RDF) in order to change the fuel base for the production of heat and electricity. The planned capacity is 180,000 t/y of solid fuels, which will be utilized to produce 20 MWe of electrical energy and 58 MWt of thermal energy. Dehydrated sludge from sewage treatment plants, low-grade RDF and low-grade biomass could also be treated, if necessary. The main technological components and processes of the new installation are the following: 1. Combustion chamber and convective part of the boiler, with "grate" technology; 2. A horizontal boiler in which the heat of the flue gases will be used to produce steam; 3. Turbine and boiler - condenser - the steam from the boiler will be taken to a turbine, generating energy for the national power grid, and the exhaust steam from the turbine will be taken to an attached boiler - condenser, in which the steam will condense and generate thermal energy, supplying the local district heating network; 4. Pollution control facilities - it is planned to build a system for selective non-catalytic reduction in the rational part of the boiler, in order to reduce NO_x concentrations. The installation will also be equipped with a combined dry-wet flue gas cleaning system with bag filters and a reactor for injection of activated carbon and hydrated lime - by injecting slaked lime, the acid components of the flue gas will be absorbed, injection of activated carbon will absorb mercury, heavy metals and dioxins, bag filters will remove fine dust particles (PM), hydrated lime and activated carbon, for additional purification of the flue gases from PM, acid components and heavy metals, a wet scrubber is installed, at the inlet of the scrubber water is injected to cool the flue gases, and the water flowing from it is used in the semi-dry stage to moisten the hydrated lime and cool the flue gases, a condenser stage is installed at the end of the chain, and the purified flue gases are released into the atmosphere at a height of 80 meters. In the EIA the main stage in the utilization of waste through combined electricity generation is indicated as the removal (release) of the gases into the atmospheric air, generating an emission flow that will be discharged into the atmosphere from a new stationary organized source (chimney). The pollutants emitted from the exhaust devices after the implementation of the IP can be divided into two groups: main common pollutants - nitrogen oxides (NO_x), sulfur oxides (SO₂), total dust (PM₁₀) and carbon monoxide (CO), for which a cumulative effect is expected to occur with the existing discharge devices; specific pollutants – total organic carbon (TOC); hydrogen chloride (HCl); hydrogen fluoride (HF); cadmium/thallium (Cd, Tl); mercury (Hg); inorganic dusts - total Sb, As, Pb, Cr, Co, Cu, Mn, Ni, V (Pb⁺⁺) and dioxins and furans - a new type of environmental burden that will be generated by the new plant for recovery of RDF waste.

Two sites for locating the installation were considered, both of which are existing industrial sites - the main site of Toplofikacia Sofia, with land property identifier 68134,551,4, Serdika district, with an area of 15 decares, where the installation is planned to be located in the western part of the site; and an alternative site, Toplofikacia Sofia-Iztok, with land property identifier 68134,1506,143, "Iskar", with an area of 20 decares.

The investment proposal thus described falls within the scope of Appendix No. 1, item 2.1. to Article 81, Paragraph 1, Item 2 of the Environmental Protection Act (EPA) and in accordance with Article 92, Item 1 of the Environmental Protection Act, it must be subject to an environmental impact assessment, as observed in the issued administrative act. In the decision of the Supreme Administrative Court, by which the case was returned to the Administrative Court in Sofia for reconsideration, the following mandatory instructions are given:

- to collect additional evidence, from which to establish all the facts relevant to the lawful determination of the scope of the affected public and the holding of public consultations according to the rules of the Environmental Protection Act and the Ordinance on THE CONDITIONS AND PROCEDURE FOR PERFORMING AN ENVIRONMENTAL IMPACT ASSESSMENT (EIA Ordinance);
- to clarify the questions regarding the health risk, the content, the levels and territorial extent of distribution of the emissions harmful to human health from the discharge device, taking into account the data on the distances to residential buildings and to sites, subject to public health protection regulations;
- with regard to hazardous and non-hazardous waste, to establish whether the requirements for sufficient information regarding the provisions for their treatment, impact assessment and informing the affected public have been met.

In connection with the above, the current court panel took into account the following: Pursuant to Art. 96, Para. 1 of EPA, in its edition to issue the disputed administrative act, the EIA report should also contain:

- description and analysis of the components of the environment under Art. 4 (atmospheric air, atmosphere, waters, soil, subsoil, landscape, natural objects, mineral diversity, biological diversity and its elements) and the environmental factors under Article 5 (natural and anthropogenic substances and processes; different types of waste and their locations; risky energy sources - noises, vibrations, radiations, as well as some genetically modified organisms (item 3); - description, analysis and assessment of suspected significant impacts on the population and the environment as a result of: a) the implementation of the investment proposal; b) the use of natural resources; c) the emissions of harmful substances during normal operation and in emergency situations, the generation of waste and the creation of discomfort (item 4); - information on the methods used for forecasting and assessing the impact on the environment (item 5); - a description of the measures intended to prevent, reduce or, where possible, terminate the significant harmful effects on the environment, as well as a plan for the implementation of these measures (item 6).

The EIA, prepared in accordance with Art. 96, Para. 1, Item 3 of the EPA (4.1.2 and 4.1.4), presents data on components and factors of the environment in which the IP is planned to be implemented - including available data on the pollution of the atmospheric air in the

area of the site and the measured concentrations - average daily and nightly, as well as hourly average. Data on the relief of the area and the temperature inversions of the air in this connection are also indicated. E.g., in EIA there are data on measurements of K. in AIS "N." (near TUEC-S.) in 2012, in which an exceedance of the average annual and average daily and nightly norms for the concentration of fine dust particles was found (PM10). It has been established that the surface concentrations of pollutants (except for surface ozone) are higher during the winter months, i.e. during the heating season, when the meteorological conditions are unsuitable for dispersing the emissions: there is fog, no wind, temperature inversions (I.83-95 EIA). In the description, analysis and assessment of the alleged significant impacts on the population and the environment in the EIA, according to Art. 96, paragraph 1, item 4 of the Environmental Protection Act, and in particular in the modeling of the dispersion of emissions of harmful substances, however, the PLUME software product was used (p.205 of EIA), which examines only the effect of air pollution caused by the installation itself, not taking into account the topography of the area. In this regard, the expert A.B. points out (p.497 of the report) that for the modelling with the PLUME product no data was entered on the existing air pollution of the territory of Sofia with fine dust particles (PM) and sulfur dioxide from sources other than the installations of "Toplofikatsia Sofia" EAD, as the model cannot accept input information about existing pollution formed by all existing sources of atmospheric pollution on the territory of Sofia, such as point, linear (road transport network) and area (domestic heating of neighborhoods, open land areas, embankments, etc.). Also, in tables 5.1-7 and 5.1-14 of EIA (page 451) regarding the annual and maximum one-time concentrations after the implementation of the changes in Toplofikatsia Sofia, the expected concentrations in atmospheric air after the implementation of the IP have been compared with air quality norms, without taking into account the background (existing) pollution formed by all point, linear and area sources on the territory of the city. In the conclusion of expert B. (p.492) it is also pointed out that for modeling of the maximum possible concentrations formed by the installation as a source of atmospheric pollution, under possible adverse conditions and wind direction towards sensitive areas, such as residential areas, in the EIA report the authors have selected a hot summer day with a temperature of 30 degrees and the unstable atmospheric stratification characteristic of this type of weather, and this was done on the assumption that in such weather conditions the effective height of the chimney is lowest. The EIA did not consider the case of temperature inversions. In the EIA report there is no figure showing the maximum one-time ground-level pollution of the atmospheric air with nitrogen dioxide from the activities of Toplofikatsia Sofia. The report does not indicate the distance from the source at which the maximum one-time concentration of the relevant pollutant is formed. Given the foregoing, the court finds that in the analysis and assessment of the alleged significant impacts from the implementation of the IP, certain environmental components and factors have not been taken into account, in particular the characteristics of the existing atmospheric air pollution, which is highest during the winter period, when temperature inversions most frequently occur; and for modeling possible adverse conditions a hot summer day was selected with the unstable atmospheric stratification characteristic of this type of weather. The court accepts that the above facts compromise the quality of the EIA and leads to the conclusion of the illegality of the contested decision of the director of the RIEW.

Also, as pointed out by the experts in the expertise assigned to the case, the quality and characteristics of RDF fuels are relevant to the content and levels of harmful atmospheric emissions from the operation of the IP. The plan is for the installation to work with modified solid fuels (RDF) obtained from processing household waste with a nominal calorific value

of 13GJ/t (deviation between 12GJ/t and 14GJ/t), the burning of which generates technological waste in the form of bottom ash, boiler ash and fly ash. The installation can also treat low-grade RDF, sludge and low-grade biomass. According to the conclusion with expert engineer N.I. the bottom ash content also depends on the quality of RDF, for example with low-quality process and low-quality RDF, this can lead to contents of hazardous waste - heavy metals – in the bottom ash, which, according to the EIA, is intended to be treated as non-hazardous waste. According to expert K.B. the EIA does not contain data on a mechanism for quality control of the RDF. There is no information about a mechanism to control the content of process waste – e.g. for the bottom ashes. The report states that typically bottom ash makes up 16-20% of the RDF depending on the ash/aggregates content of the incoming RDF.

In in this connection and according to the instructions of the SAC, Sofia Municipality has been instructed several times to submit protocols from the monthly testing in the laboratory at the Mechanical Biological Treatment plant with data about the quality of RDF (caloric content and composition) for the period from 2015 onwards. In the case, only 3 sampling protocols and their accompanying test reports were presented: from dates 04.22.2020, 06.03.2020. and 07.07.2020. Despite the instructions given, no other protocols have been provided. In this regard, although the requested protocols concern a period after the issuance of the disputed act, according to Art. 142, para. 2 of CAP, the establishment of new facts relevant to the case after the issuance of the act is assessed at the time of the conclusion of the oral proceedings. In view of the above, the court finds that to the extent that the case lacks data on the characteristics and content of the RDF fuel produced in the Plant for Mechanical and Biological Treatment of Waste, the utilization of which RDF fuel is envisaged by the IP, the conclusion regarding the expected impacts of its implementation is unfounded, including but not only, on atmospheric air.

According to the EPA, the burning of RDF in grate-type plants generates process waste (residues from the plant operation) in the form of bottom ash, boiler ash and fly ash. It is expected that the total amount of technological waste in the incineration of modified solid fuels obtained from RDF waste is about 25%, incl. hazardous waste from 4% to a maximum of 6% "Boiler Ash" and "Fly Ash". This fraction is classified as hazardous waste - Group under code 19 01 - Waste from combustion or pyrolysis of waste, which hazardous waste must be treated in a special facility. In EIA (p. 205), it is envisaged that those wastes will be collected in bulk in large silos with storage capacity - at least for 8 days, but data on technical characteristics and capacity of silos for hazardous waste products are missing. After which they should be transported from the installation to a specially built depot for temporary storage with three possible options - regional depot S. - 200 km, R. - 330 km or a mine in Germany - 2000 km; 10,800 t/year; 35 t/day, which requires 1.4 expeditions/day. In 2013, when the task of scope and content of the EIA report was prepared, the provision of Art. 4, para. 3, item 6 of the EIA Ordinance (State Gazette No. 94 of 2012) obliged the contracting authority "Toplofikatsia Sofia" EAD at the earliest stage of its investment proposal to present information with the details of the IP, which it also contains a description of the waste expected to be generated and provisions for its treatment. In this connection is also the opinion No. 26-00-1112 of 14.11.2013 of the Sofia Regional Health Inspectorate in Appendix No.2 (550-551 of the case), with which requires that detailed and comprehensive information be presented about the transport routes for servicing the site, indicating the populated territories through or near which the routes pass (item 5). The EIA report has not done that, considering that "It is necessary for Sofia Municipality to look for a real possibility to rationally solve the problem, as it is

necessary to conduct studies to determine a site for a landfill for hazardous waste at a closer distance from the IP site." It is reflected in the EIA that the impact of hazardous waste will be negative and directly not only on the site of the investment proposal, but also on the relevant routes and depots that will be used. It is recommended that in the future, additional studies related to alternative solutions and techno-economic justification for adopting the most rational solution for waste treatment be carried out. The absence in the EIA of the mandatory minimum information regarding the treatment of the generated hazardous waste from the operation of the installation: transport mode, removal route, risks of accidents, including in case of possible accidents and dispersion of hazardous waste, impact on the population and the existence of prerequisites for conducting consultations with the public, which is affected or is likely to be affected by the planned transportation to remote landfills - S., R. or Germany renders unfounded the assessment regarding the quality of the report by the administrative body as per Art. 14, para. 1 of the EIA Ordinance.

In the EIA, the following 3 groups are set apart as potentially affected population in the area where the IP is proposed to be implemented: the construction workers, those working on the territory of the site - 626 employees and those working on the territory of the IP - according to the project about 35-37 people. The inhabitants in the neighborhoods in District S. are not considered as a potentially affected population due to the fact that after putting the installation into operation, subject to compliance with the technological regime of the treatment facilities, no deterioration of the indicators and norms for the quality of the atmospheric air is expected. Regarding the risks of the implementation of the IP on the health of the population, the court considered the following: With the opinion No. 26-00-1112/14.11.2013 of the Sofia Regional Health Inspectorate it is recommended that the EIA analyze the health and demographic status of the nearest settlements on the basis of current data on the demographic situation (in terms of birth rate, mortality, natural increase, infant mortality, etc.) and morbidity (by level and structure). The data should be compared with those of the city, the district and the country as a whole. According to item 1, it is recommended to determine the exact distances from the nearest residential buildings, water sources, other sites and areas subject to health protection to all sub-sites that are potential sources of harm. In this matter, the expert Doctor D. T. - an expert on health risk - has given a conclusion that near the installation there are sites which are subject to health protection in the sense of para. 1, item 3 of the EIA Ordinance (The National Multidisciplinary Transport Hospital is located at 925 meters from the IP site, the Seventh Polyclinic - about 1000 meters, etc.), for which the contracting authority was obliged to inform the competent authorities in writing at the earliest stage of its investment proposal. Questions about the health-demographic status specifically of the nearest regions and settlements, which are important for the quality of the environment and the public discussions held, have not been investigated. There is no analysis of the above circumstances in the EIA. In the EIA report (p 281-284) there is no analysis of the quantities of released dioxins and furans, their accumulation and the related risks for human health.

Regarding compliance with the provisions of the EIA Ordinance for organizing and conducting public hearings of the EIA report with the affected public in the sense of para.1, item 25 of the EPA and having taken in view the mandatory instructions given by the Supreme Administrative Court, this court accepted the following:

By letter I. No. 26-00-9207/29.01.2015 and letter with outgoing No. 26-00-9207/28.05.2015 of the Director of RIEW-Sofia, "Toplofikatsia Sofia" EAD is notified that the submitted EIA was evaluated positively, and it indicates that, according to Art. 16, paragraph 1 of the Ordinance on the conditions and procedures for performing an EIA, the contracting authority should organize public hearing of the EIA report and its annexes with the affected Serdika District and Iskar District in Sofia municipality.

The provision of Art. 16, paragraph 1 of the EIA Ordinance (State Gazette, no. 94 of 2012) obliges the competent authority or an official authorized by it to determine the affected municipalities, regions and/or town halls, with which the contracting authority can organize public discussion of the EIA report and its annexes. Thus written, the obligation expressly provides for the identification of the affected public not only on the level of municipality, but also on the level of its constituent administrative-territorial units – in this case districts and town halls. According to Art. 2, para. 1 of the Law on the territorial division of the capital municipality and large cities, Sofia municipality is divided into districts and town halls in the regions. With para. 2 twenty-four regions were created, each with its own name and boundaries. With para. 4 in the regions of Sofia municipality are established town halls in eight districts, including "Novi Iskar" district and Kremikovtsi district. From the analysis of the collected evidence, it is established that advertisements were placed and published on the boards of the administrative addresses of RIEW-Sofia, at Sofia Municipality, in District Serdika (location of the selected site) and of in Iskar District (location of the alternative site), at the website of Sofia Municipality, in "Sofiyski Vestnik", "24 Chasa" and "Novinar" newspapers. Access to EIA was provided and a public discussions were carried out in the buildings of the Iskar and Serdika Districts, and Sofia Municipality.

The selected site for the realization of the investment proposal is located in Serdika District, but there are enough data in the case about the likely adverse impact of the implementation on the neighboring areas and accordingly – about potential danger of affecting the environment of the territories of these regions. According to the conclusion of the judicial-technical expert appointed in this case, the scope of impact of the discharge device during normal (accident-free) operation of the installation occurs mainly on the territories of Serdika district, but also a small area of Nadejda District (the eastern part of the residential area) in Sofia Municipality. Also, it is envisaged that the RDF fuel will be supplied from the plant for mechanical biological treatment (MBT) in the land of [settlement], locality Sadinata by road transport - in bulk by trucks with semi-trailers (16.5 m, with rear unloading), with annual delivery of 80,000 t, equivalent to 600 t per day waste that will be delivered to the new installation, which would require 23 expeditions/day. The distance from the MBT plant to the IP site by road is about 23 km and is determined on the condition of a route on [street] and [street] (District "P."). After burning RDF, non-hazardous (inert) waste is expected to be generated - up to 20% bottom ash (gratings and slag), which will be transported from the IP site to the construction waste disposal site Vrajdebna (District Kremikovtsi has an increased health risk related to the pollution of atmospheric air, according to Decision No. 822 of the Council of Ministers of December 19, 2008) – 36,000 t/year; 115 t/day, distance about 11.5 km. The route of removal of the bottom ash will also pass through Novi Iskar District and "N." District; in addition, according to the conclusion of the single judicial-technical expertise, accepted at the first examination of the case, this also affects the villages of S. And Kubratovo. In the Act issued under Art. 16, paragraph 1 of the Ordinance on EIA the above-mentioned areas "P.", "K.", "Novi Iskar" and "N." and the villages S. and Kubratovo are not defined as affected and no public discussion of the EIA report and its annexes was organized with them, despite information

about the adverse effects on the population of the territories, caused by the emission load from daily traffic of Heavy Goods Vehicles (HGVs) and the associated additional load with atmospheric pollutants, noise, vibrations and odors, which is a reason for it to be designated as "affected public" in the sense of art. 2, item 4 and item 5 of the Aarhus convention and para. 1, item 25 in conjunction with item 24 of the Additional Provisions section in the EPA. Given the above inadequacies and inaccuracies of the EIA, which in the assessment of the criteria from art. 14, para. 1 of the EIA Ordinance are found to compromise the conclusion about the quality of the EIA report, as well as the lack of organization and holding of public discussions of this EIA report with some of the affected public, the court finds that these are sufficient grounds for annulment of the contested decision of the director of RIEW-Sofia, which approves the implementation of investment proposal for "Construction of a plant for combined energy production in Sofia with utilization of RDF (Refuse Derived Fuel) waste" at site Toplofikacia Sofia.

In this outcome of the case the applicant Ecological Association "Za Zemiata" will need to be reimbursed for the costs incurred by them under the present case in the amount of BGN 1 300 for expert examinations and for the proceedings at the Supreme Administrative Court BGN 1 600 for attorney's fees.

Considering that, at the present time, the parties to the case have not paid in full the amount the remunerations determined for the experts Engineer B. and Engineer N. for the conclusions prepared by them on their assigned expert examinations, with the unpaid balance amounting to BGN 987,50 for each of them, and in view of the outcome of the case, the court finds that the same will need to be paid by the defendant.

For the stated reasons and on the basis of Art. 172, para. 2 of the CAP, Sofia-city Administrative Court, Second Department, 31 Chamber,

Decided:

REPEAL Environmental Impact Assessment Decision No. SO-03-03/2015 from 28.08.2015 of the Director of Regional Inspection for environment and water - Sofia, which approves the implementation of investment proposal for "Construction of a plant for combined production of energy in Sofia with utilization of RDF (Refuse Derived Fuel) waste" on site Toplofikacia Sofia in with land property identifier 68134,511.4, Serdika District, Sofia municipality, with the contracting authority "Toplofikatsia Sofia" EAD.

ORDERS the Regional Environmental Inspection - Sofia to pay to Ecological Association "Za Zemiata", BULSTAT:[EIK], court costs in amount of 2 900 (two thousand and nine hundred BGN).

ORDERS the Regional Environmental Inspection - Sofia. to pay K. N. B., ID no. [], remuneration for a prepared expert opinion in amount of BGN 987,50. (nine hundred eighty-seven BGN and fifty stotinki).

ORDERS the Regional Environmental Inspection - Sofia to pay to N.I.I., ID no. [], remuneration for a prepared expert opinion in amount of BGN 987,50 (nine hundred eighty-seven BGN and fifty stotinki).

The decision is subject to a final appeal before the Supreme Administrative Court within 14 days of its notification to the parties.

JUDGE: