

TO THE SUPREME ADMINISTRATIVE COURT

FIFTH DIVISION

P L E A

From Aleksandar Kodzhabashev, Attorney-at-law, ward of “ECOFORUM” ASSOCIATION, “ZA ZEMIATA” NON-PROFIT ORGANISATION, “PODZEMNITE BOGATSTVA” ASSOCIATION, “GEO” ASSOCIATION FOR AGRARIAN AND ECOLOGICAL PROJECT and of the GREEN POLICY INSTITUTE under administrative case No. 12652/2008 of the Supreme Administrative Court (SAC), Fifth Division.

Under administrative case No. 12652/2008 of the SAC, Fifth Division

Appointed for hearing on 18.02.2009 from 9:00 o'clock

Dear Supreme Judges,

In addition to the pleas submitted by my clients against a decision for environmental impact assessment No. 8/2008 by the Minister of Environment and Waters I further specify the grounds for abrogation of the procedural decision as follows:

I. Incompleteness and inaccuracy of the Report on the Environmental Impact Assessment (REIA) and of Decision No. 8/2008. Antinomy with normative acts.

I. 1. In an addendum to section II.1. of the Plea with incoming number 48-00-756/18.08.2008 (referred to hereinafter as “the Plea”) we declare that REIA is incomplete and inaccurate which is an infringement of Art. 96, para 1, items 3 and 4 of the Environment Protection Act. The incompleteness of the REIA represents also an infringement of Art. 10 in relation to item 10 of Annex 2 to Art. 10, item 1, letter “b” of the Rules of Procedure of the Joint Committee for Priority Environment Projects and Development of the Republic of Bulgaria, adopted by a Decree of the Council of Ministers No. 50/16.03.1994 (referred to hereinafter as “the Rules”).

Item 10 of Annex 2 to Art. 10, item 1, letter “b” of the Rules defines the area of “Pirdop – Zlatitsa – Topolnitsa River” as an “ecologically hot spot”. Undoubtedly, this area includes also Chelopech – first of all because Chelopech is in the same aerial basin with Pirdop and Zlatitsa, and secondly – because Chelopech belongs to the watershed of the Topolnitsa River (the link between the tailings pond of the investment proposal and the watershed of the Topolnitsa River has been emphasized throughout the REIA).

The Rules regulate the mechanism for approval and funding of projects, aimed at solving ecological problems in the “ecologically hot spots”. According to the Rules, the dealing with ecological problems in the ecologically hot spots is a priority of the projects implemented in the regions of the ecologically hot spots.

The procedural investment proposal, approved by Environment Impact Assessment Decision No. 8/2008 does not correspond to any of the priorities stated in Art. 10 of the Rules. Even on the contrary – the incompleteness of the REIA and of the EIA Decision No. 8/2008, as well as the incorrect factual and logical formulations of the REIA and of the EIA Decision represent a prerequisite for the occurrence of consequences which are diametrically opposite to the priorities stated in Art. 10 of the Rules.

In pursuance of Decree of the Council of Ministers No. 50/16.03.1994 the Ministry of Health, through the National Centre of Public Health Protection periodically carries out surveys of the air, water and soil quality at the “Zlatitsa – Pirdop” industrial region and the potential health risk for the population. Such surveys have been prepared in 1994 and in 2006.

The authors of the REIA have not acquainted themselves with the above-mentioned official documents, in which the environmental status of the “Pirdop – Zlatitsa – Topolnitsa River” region has been documented, although the authors of the “Soils” Section of the Study of 2006 are two of the authors of the Health and Ecological Assessment of the investment proposal to Chelopech Mining EAD for extension of the processing of copper and gold ores from the Chelopech Deposit to 3 mln. tons. and metal production from concentrate. The persons in question are Ass. Prof. Dr. Al. Spasov and Dr. M. Sidzhimov.

The authors of the REIA have not even stated the above-mentioned official documents in the Report reference literature and do not refer to these official surveys.

The survey of 2006 contains data about the air, water and soil pollution in the region of Pirdop – Zlatitsa – Topolnitsa River which are totally different from the “optimistic” but incorrect findings of the REIA.

I.2. In an addendum to section II.1 of the Plea we claim that the authors of the REIA, contrary to the provisions of Art. 96, Para 1, items 3 and 4 of the Environment Protection Act have neglected and have not discussed at all the so important issue of the arsenic pollution of the water of the Topolnitsa River Valley.

This pollution is of paramount importance because:

- during the recent years it has become clear that the drinking water in the region of the Poibrene Village is strongly polluted with arsenic;

- in 1996 and 2006 the Ministry of Health commissioned the National Centre of Public Health Protection to prepare reports on the survey of the sanitary and hygiene aspects of the anthropogenic arsenic pollution of the water of the Topolnitsa River Valley. **These reports are a fact, however the authors of the REIA have suppressed them and not only they have not included the conclusions of the reports in their findings but even have not mentioned them in the REIA Reference literature.**

The above-mentioned reports reveal the link between the industrial activity in the Topolnitsa River Basin and the anthropogenic pollution with arsenic of the waters of the Topolnitsa River Valley.

By suppressing the above-mentioned reports the procedural REIA **gives incorrect information about the status of the environment, human health and the human health risks.** REIA's omission to refer to these reports is especially reproachful, taking into account that these reports have been paid with the money of the Bulgarian tax-payers, as well as with the money of the "Environment and Health" National Programme and Action Plan.

For the purpose of establishing the incompleteness of the REIA in the described aspect, below I address a request for attaching the above-mentioned reports to the case.

I.3. In an addendum to section II.1 of the Plea I maintain that the authors of the REIA have not taken into account an important survey titled "Report on the Implementation of an Assignment: 'DEFINITION OF THE CONTENT OF SOME TOXIC ELEMENTS IN ENVIRONMENTAL OBJECT AND BIOLOGIC SAMPLES FROM SELECTED REGIONS OF THE COUNTRY" – SOFIA 1990, commissioned by the State Committee for Environment Protection with the Council of Ministers, contract No 33/1088 of 1989, contractor – Programme Collective with director Senior Research Associate, PhD Iv. Petrov.

This survey contains data about the status of the environment and the human health in the region of Chelopech which are diametrically different from the data, stated in the REIA.

The non-referral to this survey represents an infringement of Art. 96, Para 1, items 3 and 4 of the Environment Protection Act.

Below, I address a request for demanding this survey from the Ministry of Environment and Waters.

I.4. In an addendum to section II.1. of the Plea I maintain that in the REIA no adequate analysis is made of the water balance. For this purpose I address a request for hearing of an expert with the task as formulated below.

II. The motives for the decision contain the following incorrect conclusions and statements:

II.1. In item 1 of the motives it is maintained that:

„In the presented Report on Environmental Impact Assessment the current status of the components and factors of the environment is examined and assessment of the impact from the realisation of the investment proposal is made, including the cumulative effect.”

This statement is incorrect because the REIA does not consider the issues of the change of:

- **the annual extraction to 3 mln. tons and the related exploitation term of 10 years;**
- **the conditions and the decrease of the reserve quantities;**
- **the risks for the environment in the region and the for population health.**

II.2. In the same item 1 of the motives it is maintained that:

„The conclusions of the EIA experts are that the technology – a subject matter of the investment proposal, fully corresponds to the adopted world practice for processing of such types of ores”.

This statement is incorrect because the ore in the Chelopech Deposit has uniquely high content of arsenic and there is no world practice for this raw material.

II.3. In item 1 of the motives it is maintained that the conclusions of the EIA experts are:

- *„the technology – a subject matter of the investment proposal, fully corresponds to the adopted world practice for processing of such types of ores”.*

This statement is incorrect because the ore in the Chelopech Deposit has uniquely high content of arsenic and there is no world practice for this raw material.

II.4. In item 1 of the motives it is maintained that the conclusions of the EIA experts are:

- *„no adverse health effect is expected for the population of the villages of Chelopech, Chavdar, Karlievo and Tsarkvishte as a result of the emissions of harmful gases, dust and noise”;*

This statement is incorrect because increased pollution of the waters and soils with arsenic and cyanogenic compounds and of the air with hydrogen cyanide may be expected;

II.5. In item 1 of the motives it is maintained that the conclusions of the EIA experts are:

- *„no technological reasons exist that may lead to change of the condition of the underground water as a result of the realisation of the investment proposal”*

This statement is incorrect because the utilisation of the tailings pond is related to a risk of leaching of the arsenopyrite, as well as of the unclear reaction in real conditions of the arsenic and cyanogenic compounds (depending on the acidity of the environment).

II.6. In item 3 of the motives for the decision it is maintained that *“The arsenic contained in the wastes to be deposited in the tailings ponds will be compounded in a stable compound, harmless to the environment and human health – ferriarsenate, recommended by the best available techniques.”*

This statement has not been verified in the specific conditions, especially the high content of arsenic and acidity of the environment.

II.7. In item 5 of the motives it is maintained that *“Measures have been proposed for all development phases of the investment proposal, including the phase of closing and re-cultivation, during the implementation of which there will be ensured prevention and decrease of considerable adverse impact on the people and the environment.”*

This statement is not true because the REIA envisages the measures for prevention of the impact on the environment to be undertaken depending on observations during the exploitation.

II.8. In item 6 of the motives it is maintained that „*During the exploitation of the existing tailings pond and the construction and exploitation of the new tailings pond the provisions of Regulation 2006/21/EC on the extraction industry waste management will be applied*”.

This statement is not true because in every tailings pond there are natural processes running which cannot be foreseen, especially for arsenic and cyanogenic compounds.

II.9. In item 8 of the motives it is maintained that: „- *the ore extraction will continue to be performed by the underground method with open chambers with subsequent filling, allowing for better ore extraction.*”

The statement “allowing for better ore extraction” has not been proven.

II.10. In item 8 of the motives it is maintained that: „*the chosen technology for high-temperature oxidisation under pressure is the only applicable ecological technology for ore processing to obtain copper and gold.*”

This statement is incorrect. The chosen technology is not the only one and has not been verified in industrial conditions. But on the other hand it guarantees high return on the value with unduly high risk for adverse impact on the environment and the population.

II.11. In item 34 from the conditions of the decision for EIA it is stated that: “*During the filling of the processed mine areas it is prohibited to:*
- *use the waste from ore dressing without achieved optimal gold extraction from ore pyrite, as per the approved annual work plans*”

This condition is unfeasible because the loss of gold in the production of collective concentrate to be processed through high-temperature oxidisation with subsequent cyanidation, will be more than 40%. This is intolerable rapacious utilisation of exclusive state property by the concessionaire.

III. We maintain that in the agreement of the statements on the REIA by the executive authority bodies, gross infringement has been done as a result of which the position of the executive authority bodies has been expressed by persons who had been hired, prior to that, by the assignor to prepare the Health and Ecological Assessment which is an inseparable part of the REIA.

The persons in question are Ass. Prof. Dr. Al. Spasov and Dr. M. Sidzhimov. These two experts have prepared the Health and Ecological Assessment, an inseparable part of the REIA, on 12.12.2005. And later, already in their capacity of the National Centre of Public Health Protection have “evaluated” their own piece of work.

We deem that this situation is inadmissible and the above-mentioned two specialists are in an evident situation of conflict of interest.

We maintain that the evident conflict of interest vitiates the decision-making process and that the assignor could not have been unaware of the obvious conflict of interest.

IV. In item 13 of the conditions for the decision the assignor is obliged to develop an Emergency Action Plan.

We maintain that such an Emergency Action Plan should be a part of the investment proposal.

This is clear from the analysis of the accident in Baia Mare (Romania) that happened in 2000.

A special report of the International Task Force for Assessing the Baia Mare Accident (p. 8) points out that the utilisation of closed circuit systems poses a risk of accidents if the investment proposal does not provide for a possibility for emergency discharge of excess waters when overflow threatens.

In the procedural case, the Chelopech tailings pond investment proposal does not foresee a possibility for emergency discharge of excess waters when overflow threatens. This defect cannot be overcome by the Emergency Action Plan.

V. I maintain also the other reasons for abrogation of the procedural decision, contained in my clients' complaints.

EVIDENCE:

1. To ascertain my statements in section I.1. of the present Plea, I attach and ask you to accept as evidence a survey of the air, water and soil quality at the "Zlatitsa – Pirdop" industrial region and the potential health risk for the population, prepared by the National Centre of Public Health Protection (NCPHP) in 2006.

I request that you demand from the Ministry of Health the survey of the air, water and soil quality at the "Zlatitsa – Pirdop" industrial region and the potential health risk for the population, prepared by the National Centre of Hygiene, Medical Ecology and Nutrition (the predecessor of NCPHP) in 1994.

2. To ascertain my statements in section I.2. of the present Plea, I request that you demand from the Ministry of Health the reports on the surveys of the health and hygiene aspects of the anthropogenic arsenic pollution of the waters in the Topolnitsa River Valley, prepared in 1996 and 2006.

3. To ascertain my statements in section I.3. of the present Plea, I request that you demand from the Ministry of Environment and Waters the "Report on the Implementation of an Assignment: 'DEFINITION OF THE CONTENT OF SOME TOXIC ELEMENTS IN ENVIRONMENTAL OBJECT AND BIOLOGIC SAMPLES FROM SELECTED REGIONS OF THE COUNTRY" – SOFIA 1990, commissioned by the State Committee for Environment Protection with the Council of Ministers, contract No 33/1088 of 1989, contractor – Programme Collective with director Senior Research Associate, PhD Iv. Petrov.

4. To ascertain my statements in section I.4. of the present Plea I request the admission of an expertise by an expert – mining engineer, to answer the question: Has the balance of the waters in the procedural investment proposal been correctly prepared?

5. To ascertain my statements in section II of the present Plea, as well as my statement in section II.3. of the Plea with incoming number No. 48-00-756/18.08.2008 I request that you admit to examination the leaders of the team that has prepared the REIA. I ask that these team leaders be interrogated and invited to confirm or reject the described incorrect (to our opinion) motives for the decision for EIA (which refer to the REIA).

6. To ascertain my statements in section IV of the present Plea, as well as my statement in sections II.1.B. and II.6. of the Plea with incoming number 48-00-756/18.08.2008, as well as the statement that the investment proposal affects all municipalities along the Topolnitsa River and the Maritsa below the site of the investment proposal, I attach and ask you to accept as evidence a report of the International Task Force for Assessing the Baia Mare Accident, translated by a sworn translator.

7. To ascertain my statements in sections II.4, II.5., II.6 of the present Plea, as well as in section II.2 of the Plea with incoming number 48-00-756/18.08.2008 I attach and ask you to accept as evidence a translation from the English language of a report, titled "Cyanide Uncertainties" written by my PhD Robert E. Moran.

City of Sofia, 18.02.2009

Yours Sincerely: