



## Reports of Cases

### ORDER OF THE VICE-PRESIDENT OF THE COURT

21 May 2021 \*

(Interim relief – Article 279 TFEU – Application for interim measures – Environment – Directive 2011/92/EU – Assessment of the effects of certain projects on the environment – Lignite mining activities at an open-cast mine – Turów lignite mine (Poland))

In Case C-121/21 R,

APPLICATION for interim measures under Article 279 TFEU, lodged on 26 February 2021,

**Czech Republic**, represented by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,

applicant,

v

**Republic of Poland**, represented by B. Majczyna, acting as Agent,

defendant,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, P. Pikamäe,

makes the following

### Order

- 1 By its application for interim measures, the Czech Republic asks the Court, pending the judgment of the Court in the main action, to order that the Republic of Poland immediately cease lignite mining activities at the Turów mine (Poland).
- 2 That application has been made in an action for failure to fulfil obligations under Article 259 TFEU, brought by the Czech Republic on 26 February 2021 and seeking a declaration that the Republic of Poland has failed to fulfil its obligations under:
  - Article 4(1) and (2) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European

\* Language of the case: Polish.

Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) ('the EIA Directive'), read in conjunction with Article 4(4) to (6), Article 5(1) and (2) and Articles 6 to 9 of that directive, by authorising the extension of lignite extraction for a period of six years, without conducting an environmental-impact assessment;

- Article 6(2) to (7), Article 7(5), Articles 8 and 9 and Article 11(1) of the EIA Directive, by allowing the exclusion of the public concerned from the procedure for the grant of development consent;
- Article 11(1) of the EIA Directive, by declaring the decision of the Regional Director for Environmental Protection in Wrocław (Poland) of 21 January 2020 on the environmental conditions relating to the project for the continued operation of the Turów lignite deposit until the year 2044 ('the EIA decision') immediately enforceable;
- Article 4(1)(a)(ii) and (b)(ii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), by failing to include in the EIA decision a potential procedure to be followed in the event that exemptions are not granted for the bodies of water concerned under Article 4(5) of that directive;
- Article 6(2) to (7), Article 7(1), (2) and (5) and Article 8 of the EIA Directive, by failing to allow the participation of the public concerned and of the Czech Republic in the procedure which resulted in the decision of the Minister for Climate of the Republic of Poland of 20 March 2020 on the amendment to development consent No 65/94 for the extraction of lignite from the Turów deposit, by which the development consent for the extraction of lignite at that mine was extended for six years ('the development consent for the extraction of lignite until 2026');
- Article 9(1) and (2) of the EIA Directive, by failing to publish the development consent for the extraction of lignite until 2026 and by failing to communicate the development consent to the Czech Republic in a comprehensible form;
- Article 11(1) of the EIA Directive, by failing to enable judicial review of the development consent for the extraction of lignite until 2026;
- Article 7 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26), by failing to publish the development consent for the extraction of lignite until 2026;
- the principle of sincere cooperation referred to in Article 4(3) TEU, by failing to provide complete information in relation to the procedure for the grant of development consent for the extraction of lignite until 2026;
- Article 2(1) of the EIA Directive, read in conjunction with Article 4(1) of that directive, by failing, in the development consent for the extraction of lignite until 2026, to have sufficient regard to the EIA decision, and
- Article 8a(1)(b) of the EIA Directive, by failing adequately to set out all the environmental conditions in the development consent for the extraction of lignite until 2026.

- 3 On 6 April 2021, the Republic of Poland submitted its written observations on the application for interim measures.
- 4 By the measure of organisation of procedure of 19 April 2021, the Vice-President of the Court put questions to the Republic of Poland to be answered in writing, to which that Member State responded by letter of 26 April 2021.

## **Legal framework**

### *EU law*

- 5 Article 1 of the EIA Directive provides:

‘1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive, the following definitions shall apply:

(a) “project” means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

...

(c) “development consent” means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

...’

- 6 Article 2(1) of that directive provides:

‘Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.’

- 7 Article 4(1) to (3) of that directive states:

‘1. Subject to Article 2(4), projects listed in Annex I shall be made 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 shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

...'

- 8 Annex I to the EIA Directive, entitled 'Projects referred to in Article 4(1)', refers, in point 19, to 'quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares', and in point 24, to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex'.
- 9 Annex II to that directive, entitled 'Projects referred to in Article 4(2)', refers, in point 2(a), to 'quarries, open-cast mining and peat extraction (projects not included in Annex I)', in point 2(e), to 'surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale', and, in point 13(a), to 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

### ***Polish law***

- 10 Article 72(2) of the ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (Law on the availability of information relating to the environment and its protection, on public participation in the protection of the environment and on environmental-impact assessments) of 3 October 2008 (Dz. U. No 199, position 1227, 'the Law on environmental information'), provides:

'The requirement for a decision on environmental conditions does not apply to amendments to:

...

(2) a concession or decision referred to in Section 1(4) and (5) including:

...

- (k) a single extension of up to 6 years of the validity of a lignite mining concession if the extension of the concession is motivated by rational management of the deposit and does not extend the scope of the concession;

...'

## **The background to the dispute and the pre-litigation procedure**

- 11 The Turów open-cast lignite mine is located on Polish territory, close to the borders of the Czech Republic and the Federal Republic of Germany.
- 12 On 27 April 1994, the competent Polish authorities granted PGE Elektrownia Bełchatów S.A., now PGE Górnictwo i Energetyka Konwencjonalna S.A. ('the operator'), a concession to operate that mine for a period of 26 years, that is to say until 30 April 2020.
- 13 On 24 October 2019, the operator submitted an application to extend that concession for six years, pursuant to Article 72(2) of the Law on environmental information.
- 14 On 21 January 2020, the Regional Director for Environmental Protection in Wrocław adopted the EIA decision and, on 23 January 2020, declared that decision immediately enforceable. On 24 January 2020, the operator attached the EIA decision to its application for the extension of the mining concession submitted on 24 October 2019.
- 15 By decision of 20 March 2020, the Minister for Climate of the Republic of Poland granted development consent for the extraction of lignite until 2026, on the basis of Article 72(2) of the Law on environmental information.
- 16 Taking the view that the Republic of Poland had infringed EU law in several respects by granting that development consent, the Czech Republic referred the matter to the European Commission on 30 September 2020, in accordance with Article 259 TFEU.
- 17 On 30 October 2020, the Republic of Poland submitted its comments. On 13 November 2020, both those Member States presented oral argument at a hearing organised by the Commission.
- 18 On 17 December 2020, the Commission issued a reasoned opinion in which it criticised the Republic of Poland for several infringements of EU law. In particular, the Commission considered that, by adopting a measure allowing an extension for up to six years of development consent for lignite mining without carrying out an environmental-impact assessment, that Member State had infringed Article 4(1) and (2) of the EIA Directive.
- 19 On 26 February 2021, the Czech Republic brought the action for failure to fulfil obligations referred to in paragraph 2 of the present order.

## **Forms of order sought**

- 20 The Czech Republic claims that the Court should:
  - order the Republic of Poland to cease mining activities immediately at the Turów mine; and
  - order the Republic of Poland to pay the costs.
- 21 The Republic of Poland contends that the Court should:
  - dismiss the application for interim measures as manifestly inadmissible;

- in the alternative, dismiss the application for interim measures as unfounded; and
- order the Czech Republic to pay the costs.

## **The application for interim measures**

### *Admissibility*

- 22 The Republic of Poland argues that the application for interim measures lodged by the Czech Republic is manifestly inadmissible, since the latter has not demonstrated the existence of a direct and close link between the interim measures sought and the infringements of EU law alleged in its main action.
- 23 In that regard, the Republic of Poland submits, in essence, that, if the main action were upheld, that fact would not necessarily mean that mining activities at the Turów mine would cease. According to the Republic of Poland, it would be required, by way of measures to implement the judgment, solely to rectify the defects and deficiencies vitiating the EIA decision and the development consent for the extraction of lignite until 2026.
- 24 The Republic of Poland recalls that, in the case giving rise to the judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraphs 173 to 175), the Court held that EU law does not preclude, under certain conditions, national rules which permit the regularisation of operations or measures which are unlawful in the light of EU law concerning the requirement to carry out an environmental-impact assessment. The Republic of Poland could, therefore, in accordance with the case-law deriving from that judgment, amend the administrative decisions challenged by the Czech Republic without needing to suspend lignite mining activities at the Turów mine.
- 25 Accordingly, the Republic of Poland is of the opinion that the interim measures sought by the Czech Republic are not intended to guarantee the full effect of the judgment on the substance and that the granting of such measures would produce effects going far beyond the obligations arising therefrom.
- 26 That line of argument cannot be accepted.
- 27 In the first place, it is important to note that that line of argument stems from a confusion between the purpose of the procedure for interim relief and the scope of the measures required for the implementation of a judgment establishing a failure to fulfil obligations under Article 259 TFEU.
- 28 In that regard, it should be noted, on the one hand, that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the subsequent decision in the main action to which the interim proceedings are an adjunct, in the present case an action for failure to fulfil obligations brought under Article 259 TFEU and for a declaration that the Republic of Poland has failed to fulfil its obligations under EU law.
- 29 On the other hand, it is true that, where the Court finds that a Member State has failed to fulfil one of the obligations incumbent upon it under the Treaties, that State is required, in accordance with Article 260(1) TFEU, to take the measures necessary to comply with the judgment of the Court. However, a question concerning the measures required for the implementation of a judgment

establishing a failure to fulfil obligations under Article 259 TFEU does not form part of the subject matter of such a judgment (see, to that effect, judgment of 8 April 2014, *Commission v Hungary*, C-288/12, EU:C:2014:237, paragraph 33).

- 30 If the Republic of Poland's line of argument were accepted, it would deprive of all substance the procedure for interim relief in the context of an action for failure to fulfil obligations under Article 259 TFEU, in so far as the Court cannot, in the judgment establishing the failure to fulfil obligations, order the Member State concerned to adopt specific measures to comply with that judgment. In any event, it cannot be ruled out that, if the main action were upheld, the Republic of Poland could be required to adopt implementing measures entailing the suspension of lignite mining activities at the Turów mine.
- 31 In the second place, it is sufficient to note that, while it is true that the Court held, in paragraph 173 of the judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622), that EU law does not preclude national rules which, in certain cases, permit the regularisation of operations or measures which are unlawful in the light of EU law, the fact remains that such a possibility is quite exceptional and that the Member State must, in principle, take measures to suspend or annul a project adopted in breach of EU law (see, to that effect, judgments of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 172 and 174, and of 12 November 2019, *Commission v Ireland* (Derrybrien Wind Farm), C-261/18, EU:C:2019:955, paragraphs 75 and 76).
- 32 In those circumstances, the application for interim measures is admissible.

### ***Substance***

- 33 Under Article 160(3) of the Rules of Procedure of the Court, applications for interim measures must specify 'the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for'.
- 34 Accordingly, the court hearing an application for interim relief may order an interim measure only if it is established that granting such a measure is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached regarding the substance. The court hearing the application for interim relief must, where appropriate, also weigh up the interests involved. Those conditions are cumulative, so that an application for interim measures must be dismissed if one of them is not met (order of 8 April 2020, *Commission v Poland*, C-791/19 R, EU:C:2020:277, paragraph 51 and the case-law cited).

### ***A prima facie case***

- 35 According to settled case-law, the prima facie case requirement is met where at least one of the pleas in law relied on by the applicant for interim measures in support of the main action appears, prima facie, not unfounded. That is the case, inter alia, where one of the pleas relied on reveals the existence of difficult legal issues the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the court hearing the application for interim relief but must be the subject of the main action, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not

immediately obvious (orders of 17 December 2018, *Commission v Poland*, C-619/18 R, EU:C:2018:1021, paragraph 30, and of 8 April 2020, *Commission v Poland*, C-791/19 R, EU:C:2020:277, paragraph 52).

- 36 In the present case, in order to establish the existence of a prima facie case, the Czech Republic relies, inter alia, on a plea, corresponding to the first limb of the first plea in law raised in its main action, alleging that, by adopting Article 72(2) of the Law on environmental information, according to which the validity of a lignite mining concession may be extended once for up to six years without any environmental-impact assessment, the Republic of Poland has infringed, inter alia, Article 4(1) and (2) of the EIA Directive.
- 37 According to the Czech Republic, open-cast mining projects with a surface area of more than 25 hectares must be made subject to an environmental-impact assessment in accordance with Article 4(1) of the EIA Directive and point 19 of Annex I to that directive. Moreover, according to point 24 of that annex, any change to or extension of such projects should also be subject to an environmental-impact assessment.
- 38 Furthermore, the Czech Republic recalls that, according to Article 4(2) of the EIA Directive, read in conjunction with point 2(a) of Annex II to that directive, open-cast mining projects of any size are to be made subject to an environmental-impact assessment.
- 39 However, in so far as a ‘concession’ within the meaning of Article 72(2) of the Law on environmental information constitutes ‘development consent’, within the meaning of Article 1(2) of the EIA Directive, the procedure leading to the granting of such a concession should comply with the obligations arising from that directive, in particular those referred to in Article 4(1) and (2) thereof. In the opinion of the Czech Republic, by providing, in Article 72(2) of the Law on environmental information, that the validity of a lignite mining concession may be extended once for up to six years without any environmental-impact assessment, the Republic of Poland has failed to fulfil those obligations.
- 40 The Republic of Poland did not contest the Czech Republic’s arguments that there is a prima facie case.
- 41 In that regard, it should be noted that, under Article 1(2)(a) of the EIA Directive, the concept of ‘project’, within the meaning of that directive, covers all interventions in the natural surroundings and landscape, including those involving the extraction of mineral resources. As regards Article 1(2)(c) of that directive, it defines ‘development consent’, within the meaning of that directive, as the decision of the competent authority or authorities which entitles the developer to proceed with the project.
- 42 Before consent is granted in respect of any project within the meaning of Article 1(2)(a) of the EIA Directive, an environmental-impact assessment must be conducted on that project pursuant to Article 2(1) of that directive, if it is likely to have significant effects on the environment, by virtue of its nature, size or location (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 73).
- 43 Thus, the requirement imposed by the latter provision is not that all projects likely to have a significant effect on the environment be made subject to the assessment procedure provided for in the EIA Directive, but only those mentioned in Article 4 of that directive, which refers,



depending on whether paragraph 1 or paragraph 2 thereof is applicable, to the projects listed in Annexes I and II thereto (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 74).

- 44 As regards, first, projects falling within Annex I to the EIA Directive, to which Article 4(1) of that directive refers, they present an inherent risk of significant effects on the environment and therefore an environmental-impact assessment is indispensable in those cases (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 75).
- 45 Those projects include, according to point 19 of Annex I to the EIA Directive, open-cast mining where the surface of the site exceeds 25 hectares and, pursuant to point 24 of that annex, any change to or extension of such projects meeting that threshold criterion.
- 46 As regards, secondly, projects falling within Annex II to the EIA Directive, to which Article 4(2) of that directive refers, Member States are required to determine, through a case-by-case examination or through thresholds or criteria set by them, or through a combination of both those procedures, whether those projects are to be made subject to an environmental-impact assessment.
- 47 Projects falling under Annex II to the EIA Directive, in accordance with point 2(a) of that annex, include open-cast mining activities other than those referred to in Annex I to that directive and, in accordance with point 13(a), any change or extension of such projects which may have significant adverse effects on the environment.
- 48 The Court has held that the competent national authorities, when they receive a request for development consent for a project relating to Annex II to the EIA Directive, must carry out a specific evaluation as to whether, taking account of the criteria set out in Annex III to that directive, an environmental-impact assessment should be carried out (judgment of 14 January 2016, *Commission v Bulgaria*, C-141/14, EU:C:2016:8, paragraph 94 and the case-law cited).
- 49 In the present case, it is apparent from Article 72(2) of the Law on environmental information that a single extension of the validity of a lignite mining concession for up to 6 years is not subject to a prior environmental-impact assessment where that extension is motivated by rational management of the deposit without extending the scope of the concession. Moreover, it is clear from the documents before the Court that the development consent for the extraction of lignite until 2026 was adopted on the basis of that provision.
- 50 In those circumstances, it cannot be ruled out, *prima facie*, that Article 72(2) of the Law on environmental information infringes the requirements of Article 4(1) and (2) of the EIA Directive, according to which, in essence, the extension of an open-cast mining project must be subject to an environmental-impact assessment or, at the very least, prior verification of the need for such an assessment.
- 51 Consequently, without giving a ruling at this stage on the merits of the arguments relied on by the parties in the main action, which falls within the jurisdiction of the court ruling on its substance, it should be pointed out that the arguments put forward by the Czech Republic in support of the first limb of the first plea in its main action, which underpin the present application for interim

measures and allege an infringement of Article 4(1) and (2) of the EIA Directive, appear, *prima facie*, to be well founded within the meaning of the case-law cited in paragraph 35 of the present order.

- 52 It follows that the condition relating to the existence of a *prima facie* case is satisfied in the present case.

### ***Urgency***

- 53 It should be recalled that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the definitive future decision, in order to ensure that there is no lacuna in the legal protection provided by the Court of Justice. For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief. It is for that party to prove that it cannot wait for the outcome of the main action without suffering such harm. For the purposes of establishing the existence of such serious and irreparable damage, it is not necessary to prove beyond all possible doubt that the damage in question will arise. It is enough to show that it is sufficiently likely to occur (order of 8 April 2020, *Commission v Poland*, C-791/19 R, EU:C:2020:277, paragraph 82 and the case-law cited).
- 54 In the present case, the Czech Republic submits that the continuation of mining activities at the Turów mine, pending the judgment of the Court in the main action ('the final judgment'), will have the effect of significantly lowering the groundwater level in the Czech Republic close to the border with the Republic of Poland and will consequently also threaten the drinking water supply of approximately 10 000 people in the Czech Republic and result in land subsidence likely to cause damage to buildings.
- 55 In particular, the Czech Republic argues, in the first place, that those mining activities already entail, on account of the drainage system of the mine, a massive and uninterrupted flow of groundwater from Czech territory into Polish territory, at a rate of 3.10 m<sup>3</sup> per minute. That phenomenon, which has continued for decades, is claimed to have the effect of rapidly lowering the groundwater level, particularly in the tertiary and quaternary layers, and of drying up surface water courses. The Czech Republic adds that, since the granting of development consent for the extraction of lignite until 2026, a significant acceleration has been observed in the lowering of the groundwater level, that fall having reached 9.45 metres in 10 months. On the basis of those elements, the Czech Republic argues that the continued operation of the Turów mine pending delivery of the final judgment could result only in an even more pronounced lowering of the groundwater level, affecting in particular the tertiary and quaternary layers.
- 56 In the second place, that Member State points out that the lowering of the groundwater level has a direct impact on the supply of drinking water in the affected area, since that phenomenon affects, on the one hand, Uhelná spring (Czech Republic), which can no longer be fully used for authorised water abstraction, and, on the other hand, surface wells, which are liable to dry up. The continuation of mining activities at the Turów mine pending delivery of the final judgment would worsen the hydrological situation of Uhelná spring and make it impossible to operate those wells, with the result that the drinking water supply of approximately 10 000 people in the area concerned would be threatened.

- 57 In the third place, the Czech Republic argues that the lowering of the groundwater level in the area currently affected may also lead to a sudden flow of groundwater from previously unaffected territory.
- 58 In the fourth and last place, the Czech Republic submits that the continuation of lignite mining activities at the Turów mine pending delivery of the final judgment could lead to land subsidence of at least 5 to 10 millimetres in the areas close to the mine, resulting in a worsening of the structural effects on buildings and damage to them.
- 59 In that regard, the Court recalls that the procedure for interim relief is not designed to establish the truth of complex facts that are very much in dispute. The Court hearing an application for interim measures does not have the means necessary in order to carry out such examinations and in numerous instances it would be difficult for it to manage to do so in good time (order of 20 November 2017, *Commission v Poland*, C-441/17 R, EU:C:2017:877, paragraph 54).
- 60 In addition, the court hearing an application for interim relief must postulate, solely for the purposes of assessing urgency, without this involving it taking any position as regards the merits of the pleas put forward in the main action by the applicant for interim relief, that those pleas might be upheld. The serious and irreparable damage whose likely occurrence must be established is that which would result, where relevant, from a refusal to grant the interim measures sought in the event that the main action was subsequently successful (order of 8 April 2020, *Commission v Poland*, C-791/19 R, EU:C:2020:277, paragraph 83 and the case-law cited).
- 61 In order to establish urgency, the Czech Republic argues, in essence, that the continuation of lignite mining activities at the Turów mine pending delivery of the final judgment is likely to lead to a significant lowering of the groundwater level in its territory, which would jeopardise the drinking water supply of approximately 10 000 people and would cause land subsidence leading to damage to buildings.
- 62 Accordingly, the interests invoked by the Czech Republic are linked to considerations based on the protection of the environment, human health and property.
- 63 In that context, it must first be observed that the damage alleged by the Czech Republic resulting from the occurrence of damage to buildings because of land subsidence is damage which is essentially pecuniary in nature. Such damage cannot, however, save in exceptional circumstances, be regarded as irreparable, since financial compensation is generally capable of restoring the position of the person suffering the damage to what it had been before that damage occurred (order of the President of the Court of 18 April 2012, *United Kingdom v Council*, C-656/11 R, not published, EU:C:2012:211, paragraph 42).
- 64 Since the Czech Republic has not claimed such exceptional circumstances, it must be held that that Member State has not established the existence of irreparable damage as regards the damage linked to building damage caused by land subsidence resulting from the continuation of lignite mining activities at the Turów mine.
- 65 By contrast, the damage linked to the lowering of the groundwater level and the damage relating to the threat to the drinking water supply of the populations dependent on the bodies of water in question may constitute serious and irreparable damage to the environment and human health.

- 66 It appears sufficiently likely, in the light of the documents before the Court, that the continuation of lignite mining activities at the Turów mine pending delivery of the final judgment is liable to have negative effects on the level of groundwater in Czech territory. Indeed, it is clear from those documents that those activities entail an uninterrupted flow of a considerable volume of water from Czech territory to Polish territory, causing undoubted deterioration in the level of groundwater in Czech territory that could threaten the drinking water supply of the populations dependent on the affected bodies of water.
- 67 The risk of overexploitation of groundwater in Czech territory as a result of the continuation of those activities is further evidenced by the fact that the Republic of Poland has adopted a major remedial measure, namely the construction of an anti-filtration screen, which is intended, inter alia, to reduce the negative effects on the environment resulting from those activities. However, it is apparent from the written observations of the Republic of Poland on the application for interim measures that the construction of such a screen will not be completed until 2023.
- 68 In that regard, in the first place, it should be recalled that, as is apparent from Article 191(1) TFEU, European Union policy on the environment is to contribute, inter alia, to preserving, protecting and improving the quality of the environment and to protecting human health. Moreover, it follows from recital 1 of Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ 2006 L 372, p. 19) that groundwater in the European Union is a valuable natural resource which should be protected from deterioration, in particular where ecosystems and the water supply for human consumption depend on it.
- 69 However, as is apparent from paragraph 66 of the present order, the continuation of lignite mining activities at the Turów mine could, by reason of the uninterrupted flow of a considerable volume of water from Czech territory to Polish territory, lead to an undoubted deterioration in the level of groundwater and to the impossibility for populations dependent on the affected bodies of water to obtain a supply of drinking water. In those circumstances, such damage must be regarded as serious.
- 70 In the second place, damage to the environment and human health is generally irreversible since, more often than not, damage to such interests cannot, by reason of its nature, be eliminated retroactively (order of the President of the Court of 2 October 2003, *Commission v Austria*, C-320/03 R, EU:C:2003:543, paragraph 92). That appears to be the situation in the present case in so far as, once they have taken place, the deterioration in the level of the affected groundwater and the numerous consequences arising from the lack of a supply of drinking water for the populations concerned could not be remedied at a later date, even if the Czech Republic's main action were upheld.
- 71 Furthermore, account must be taken of the precautionary principle, which is one of the foundations of the high level of protection aimed at by EU policy on the environment, as provided for in the first paragraph of Article 191(2) TFEU, and in the light of which EU law on environmental protection must be interpreted (see, to that effect, order of 20 November 2017, *Commission v Poland*, C-441/17 R, EU:C:2017:877, paragraph 42 and the case-law cited).
- 72 It follows from the foregoing that the continuation of lignite mining activities at the Turów mine is likely to cause serious and irreparable damage to the environment and to human health.

- 73 The arguments put forward by the Republic of Poland in its written observations on the application for interim measures are not such as to call into question that assessment.
- 74 As regards the argument that the Czech Republic has not demonstrated that the mining activities at the Turów mine are the determining cause of the lowering of the groundwater level, it is sufficient to note that it is not disputed that those activities are indeed one of the causes of the lowering of the groundwater level, with the result that the Republic of Poland itself considered that it was necessary to construct an anti-filtration screen with a view to preventing the effects of those activities. Accordingly, the damage alleged by the Czech Republic is directly linked to lignite mining activities at the Turów mine, with the result that that argument cannot be upheld.
- 75 As regards the argument put forward by the Republic of Poland that the effects of the drainage system of the Turów open-cast mine on the level of groundwater in Czech territory are temporary and reversible owing to the ongoing construction of an anti-filtration screen, it must be noted that, according to the information provided by the Republic of Poland, that work will not be completed until February 2023. That measure cannot therefore have any significance as regards the effects of the continuation of lignite mining activities at the Turów mine pending delivery of the final judgment.
- 76 The Republic of Poland's argument that the damage alleged by the Czech Republic arises from a situation prior to the adoption of the decisions authorising the continuation of lignite mining activities at the Turów mine cannot be accepted either. Although the negative impact on groundwater arising from those mining activities appears to have begun before those decisions were adopted, the fact remains that the uninterrupted flow of groundwater resulting from the continuation of those activities pending delivery of the final judgment is likely to further deteriorate the level of groundwater in Czech territory and thus cause irreversible damage to the environment and human health.
- 77 Similarly, the Republic of Poland's argument that the cessation of lignite mining activities at the Turów mine pending delivery of the final judgment would be capable neither of preventing the lowering of the groundwater level nor of mitigating its negative effects cannot be accepted. It must be noted that, even if the cessation of those activities would not make it possible to restore the groundwater level with a good status, it would make it possible to prevent the groundwater level from deteriorating irreversibly pending delivery of the final judgment.
- 78 Moreover, contrary to what is argued by the Republic of Poland, as is clear from paragraph 70 of the present order, the damage referred to by the Czech Republic arising from the lowering of the groundwater level and the lack of a supply of drinking water for the populations concerned cannot be assessed and compensated for subsequently.
- 79 In the light of the foregoing considerations, it must be concluded that the condition relating to urgency is satisfied in the present case.

### ***Weighing up of interests***

- 80 Lastly, it is necessary to examine, in accordance with the case-law referred to in paragraph 34 of the present order, whether the weighing up of interests pleads in favour of the granting of the interim measures sought or the dismissal of the application for interim measures.

- 81 According to the Czech Republic, the interest in preventing the serious and irreparable damage to the environment and human health which would result from the continuation of mining activities at the Turów mine prevails over the socioeconomic and energy interests of the Republic of Poland in the continuation of those activities.
- 82 First, the socioeconomic consequences alleged by the Republic of Poland could be avoided or compensated for by using existing instruments, such as EU funds, which would make it possible to create new jobs. Secondly, according to the Czech Republic, the cessation of lignite mining activities at the Turów mine would not necessarily lead to the interruption of the activities of the Turów power plant, since other lignite mines located on Polish territory could supply that power plant. Finally, taking into account the precautionary principle, the interest of the Czech Republic in protecting groundwater level prevails over the interest of the Republic of Poland in avoiding the purely economic consequences of a cessation of those activities.
- 83 The Republic of Poland argues that the cessation of lignite mining activities at the Turów mine pending delivery of the final judgment would have serious environmental, economic and social consequences. Moreover, the granting of the interim measures sought by the Czech Republic would threaten the energy security of the Republic of Poland.
- 84 As regards the environmental consequences, the Republic of Poland states that the sudden cessation of lignite mining activities at the Turów mine would affect the existing environmental balance at the mine and would constitute an obstacle to securing the operating site for dismantling and remediation. In particular, first, the lack of drainage of the mine would lead to its uncontrolled flooding, which would trigger negative physico-chemical processes. Secondly, the cessation of mine safety works could trigger landslides. Thirdly and lastly, the sudden interruption of mining activities could lead to a risk of rock bursts in the massif and a high risk of fires and of uncontrolled gas emissions into the atmosphere.
- 85 As regards the threat to energy security, the Republic of Poland states that the cessation of mining activities at the Turów mine would inevitably lead to the closure of the Turów power plant. According to that Member State, the technological configuration of that power plant would not allow it to be restarted after all its production units had been shut down. This would result in a radical deterioration in the energy balance of the Polish electricity system, leading to a loss of electricity production of up to 50 million kWh per year and substantial financial losses. While it was expected that that power plant would cover approximately 4.5% of Poland's electricity demand in 2021, the closure of that plant would threaten the security of the electricity supply to some 3.7 million households.
- 86 Moreover, the closure of the Turów power plant would expose a large part of Polish territory to the risk of a systemic failure, which would result in a loss of electricity supply to Polish consumers. Without that power plant, a power failure in the south-west of Poland would pose a direct threat to cross-border interconnections between the Czech Republic, the Federal Republic of Germany and the Republic of Poland. The operation of that power plant makes it possible to fulfil the requirements for maintaining the operational safety of the electricity system, as defined by EU law. Lastly, the closure of the Turów power plant would prevent important projects and investments in the energy sector from being carried out.
- 87 As regards negative social effects, the Republic of Poland states that the granting of the interim measures sought would entail the dismissal of workers at the Turów mine and the Turów power plant. Moreover, the cessation of mining activities at the Turów mine would also affect the

employees of subcontractors. Thus, closure of the mine and power plant would result in the loss of approximately 5 000 direct jobs and 10 000 indirect jobs. Ultimately, contrary to what is stated by the Czech Republic, that social damage could not be covered by EU funds.

- 88 In that regard, it is apparent from the assessments made in the context of the examination of the condition relating to urgency that the continuation of lignite mining activities at the Turów mine pending delivery of the final judgment is likely to cause serious and irreparable damage to the environment and human health.
- 89 By contrast, it must be noted, in the first place, that the Republic of Poland confines itself to stating, in general terms, that the cessation of those activities would cause damage to the ‘environmental balance’ at the mine. Moreover, while the environmental damage alleged by that Member State would result from the impossibility of securing and preparing the operating site for permanent dismantling in the event of cessation of those activities, it must be pointed out that the granting of the interim measures sought would entail neither the permanent dismantling of the Turów mine nor the suspension of safety work, but only the temporary cessation of lignite mining activities at that mine pending delivery of the final judgment. In addition, it should be noted that the President of the Court, by decision of today, decided to grant the Czech Republic’s application for Case C-121/21 to be given priority treatment in accordance with Article 53 of the Rules of Procedure.
- 90 In the second place, as regards the arguments put forward by the Republic of Poland concerning a threat to its energy security, to the electricity supply of Polish consumers and to cross-border electricity exchange, it should be noted, first, that the Republic of Poland has not substantiated the assertion that the granting of the interim measures sought would result in the irreversible closure of the Turów power plant owing to its technological configuration.
- 91 Secondly, it follows from the Republic of Poland’s written replies to the Court’s questions that the power plants located in the territory of that Member State are connected to the national electricity grid and that the electricity produced by each of them is transported to the low-voltage grid and then to final consumers. Moreover, it is also clear from those replies that electricity network operators must ensure the balance between electricity production and consumption on Polish territory and that it is for them, on that basis, to give instructions to the power plants in order that, according to the needs of that network, those plants increase or decrease their own electricity production.
- 92 It follows that, although the sudden unavailability of a power plant may have negative effects, electricity network operators are able to balance the electricity network in order to compensate for such unavailability. Therefore, the Republic of Poland has not sufficiently established that the cessation of lignite mining activities at the Turów mine would pose a real threat to its energy security, to the electricity supply of Polish consumers or to cross-border electricity exchange. Furthermore, the purported harm alleged by the Republic of Poland resulting from the impossibility of carrying out important projects and investments in the energy field cannot, in any event, take precedence over considerations relating to the environment and human health.
- 93 In the third and last place, it must be held that the socioeconomic damage alleged by the Republic of Poland, linked to job losses for workers at the Turów mine and power plant and for employees of the subcontracting undertakings, is damage which is essentially pecuniary in nature and cannot, save in exceptional circumstances, be regarded as irreparable, since financial compensation is

generally capable of restoring the position of the person suffering the damage to what it had been before that damage occurred (order of the President of the Court of 28 February 2008, *France v Council*, C-479/07 R, not published, EU:C:2008:137, paragraph 24 and the case-law cited).

- 94 While the Republic of Poland maintains that those workers and employees would be obliged, because of the irreversible nature of the cessation of activities at the Turów mine and power plant, definitively to abandon their occupations, it is clear from paragraph 90 of the present order that that Member State has not established that the granting of the interim measures sought would result in the irreversible cessation of the activities of that mine and that power plant.
- 95 In those circumstances, the weighing up of the interests involved must favour the granting of the interim measures sought by the Czech Republic.
- 96 In the light of all the foregoing considerations, the Court grants the Czech Republic's application for interim measures referred to in paragraph 1 of the present order.

On those grounds, the Vice-President of the Court hereby orders:

- 1. The Republic of Poland shall cease, immediately and pending delivery of the judgment closing the proceedings in Case C-121/21, lignite mining activities at the Turów mine (Poland).**
- 2. The costs are reserved.**

[Signatures]