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The Supreme Court of Estonia granted the appeal in cassation of environmental groups ARB and Estonian Society for Nature Conservation in part and annulled the Pärnu county plan for the Rail Baltic route in sections 3A, 4A and 4H of the route. The county plans for Harju and Rapla county remain in force. According to the Supreme Court's Administrative Law Chamber, the Minister of Public Administration adopted the county plan unlawfully, since it has not been determined what impact Rail Baltic would have on the Luitemaa bird area that is next to the route. Natura assessment is always compulsory, if it cannot be ruled out on the basis of a preliminary estimate that the planned activity will have a significant impact on the objectives of a Natura protected area.

In the matter, NGOs contested Rail Baltic's county plans. The NGOs found in their action filed with an administrative court that the county plans were unlawful both owing to procedural infringements as well as substantively. Among other things, the applicants deem that the state of the environment at the route's location and the railway's impact on the natural environment, including protected bird species, was not clarified in a sufficiently thorough manner. The Tallinn Administrative Court and Tallinn Circuit Court refused to grant the action.

The Supreme Court of Estonia's Administrative Law Chamber granted the appeal in cassation in part and annulled the Pärnu county plan for the Rail Baltic route in sections 3A, 4A and 4H of the route. The Supreme Court upheld the remainder of the administrative and circuit court's judgments.

According to the Supreme Court, the parties that prepared the plan unlawfully refrained from performing a Natura assessment of the Luitemaa bird area next to section 4A of the Rail Baltic route, having only prepared a preliminary estimate. The Minister of Public Administration should not have adopted the plan in such a situation. Based on the consistent practice of the European Court of Justice, Natura assessment is always compulsory, if it cannot be ruled out on the basis of a preliminary estimate that the planned activity will have a significant impact on the objectives of the Natura protected area. Thus, it is erroneous for the circuit court to state that a Natura assessment would have been required only if an expert would have detected a significant negative impact in the preliminary estimate. During strategic environmental assessment, an expert concluded that constructing and operating the railway may worsen the quality of the habitats of white-tailed eagle, black stork and western capercaillie, bird species that the Luitemaa bird area aims to protect. Thus, significant impact to the bird area's protection objectives was not ruled out and the Natura assessment was required.

Likewise, the Chamber did not accept the minister's explanation that as no Natura assessment was performed, no significant impact on the Luitemaa bird area can be detected. The Natura assessment could

have been omitted only if the clear conclusions of the expert would leave no scientifically substantiated doubt about the interferences being significant. The fact of failing to perform a Natura assessment does not eliminate such doubts.

In Natura's preliminary estimate concerning the Luitemaa bird area, several measures that would alleviate the potential unfavourable impact of the railway were listed, including, e.g., requirements to minimize noise and perform construction works during periods when the birds are not nesting. The European Court of Justice has explained that during the stage of preparing Natura's preliminary estimate, in which it is decided whether Natura assessment is required, measures that alleviate impact are not to be considered. Taking such measures into account during the stage of preliminary estimation may hinder the benefit of the Habitats Directive, since there is a danger that parties may try to avoid performing an assessment. The fact whether and how the impact accompanying the railway can be alleviated must be determined through Natura assessment, not in the stage of performing a preliminary estimate.

The railway's impact on the black storks, white-tailed eagles and western capercaillies was studied during the strategic environmental assessment, but these studies do not replace Natura assessment, which allows to specify whether the planned activity endangers the integrity of the Luitemaa bird area and the objectives of its protection. The collected data about the natural values of the Luitemaa bird area are incomplete. Moreover, the situation of the bird species protected at the Luitemaa bird area, their habitats in the bird area as a whole, as well as the potential impact of the railway on the integrity of the bird area has not been conclusively assessed. The conclusions of a Natura assessment may not be inconclusive and must rule out all scientifically substantiated doubts on the impact of planned works.

In addition to the railway route section 4A next to the Luitemaa bird area, the Supreme Court annulled two sections of the route connected to section 4A (3A and 4H) in the Pärnu county plan, so that the Ministry of Finance would have sufficient discretionary power to eliminate the detected error. After the Pärnu county plan has been annulled, the Ministry of Finance may choose whether it wants to initiate a new planning procedure or resume the old one. In either case, a Natura assessment must be performed.

A plan may be adopted if it is possible to determine on the basis of a performed Natura assessment that the planned railway does not harm the integrity of the Natura area or the objectives of its protection. If it becomes clear on the basis of the results of Luitemaa's Natura assessment that the railway may harm the integrity of the Luitemaa bird area, the Government of the Republic still may, on the basis of the Environmental Impact Assessment and Environmental Management System Act, adopt the Pärnu county plan in the current form. The Government of the Republic may do so if there are no alternative solutions and the construction of the railway is necessary for the public for imperative reasons of overriding public interest.

COURT ORDER [1]

Additional information

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plan-rail-baltic-route-part

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