

Estonia: Negotiating the Conditions of the Mining Permit for the Merko Oil-Shale Mine

Synopsis

This short case was chosen to show how parties were able to find an agreement about changing the conditions of a mining permit after the implementation of injunctive relief by the court.

Background of the conflict

The mining company OU Merko Kaevandused applied for a mining permit to open a new oil-shale mine near one of the most valuable Estonian protected areas: the Puhatu wetlands. Oil-shale mining has major negative side-effects to the environment as it demands a great deal of water to be pumped from the ground, causing depression of the groundwater and therefore the draining of wetlands. The environmental impact assessment (EIA) statement pointed to the depression of groundwater in the Puhatu area as a possible threat but did not offer preventive measures. Such measures were also missing from the mining permit issued by Ministry of Environment (MoE). Therefore, the EIA and mining permit were not in accordance with the law. After the objections of the Estonian Fund for Nature (ELF) were not taken into account in the EIA proceedings, ELF disputed the mining permit in court.

Parties and stakeholders to the process

- Estonian Fund for Nature – non-governmental nature protection organisation
- OU Merko Kaevandused – private company, developer
- Ministry of the Environment – public authority
- Law Firm Lepik & Luhaaar (attorneys Toomas Luhaaar and Martti Kalas) – representative of Merko Kaevandused
- Attorney Ain Alvin – representative of the Ministry of Environment
- Uudo Timm – environmental expert
- Mati Ilomets – environmental expert

There were no local people directly affected as the area in dispute is uninhabited.

Conflict resolution process

The negotiations were initiated by Merko Kaevandused after the court of first instance had granted injunctive relief and prohibited the mining for the time of the court proceedings. Merko Kaevandused

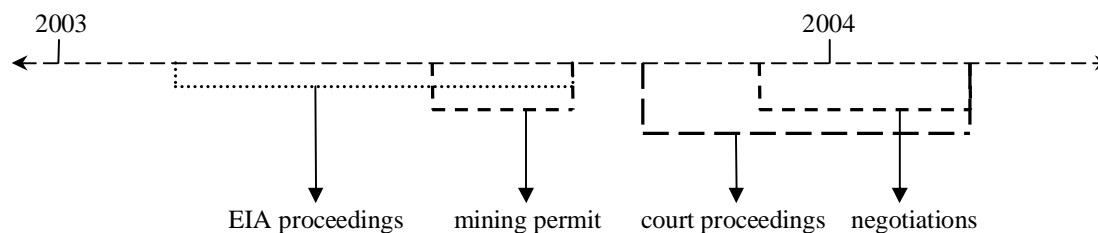
was represented by attorney Toomas Luhaaar of Luhaaar & Lepik, who contacted the chairman of the board of ELF, Marek Strandberg, in October 2004.

In December 2003, the first court session took place, after which negotiations started in the form of personal meetings between Strandberg and Luhaaar.

In January 2004 the law firm expressed their client's desire to settle out of court. A period of exchanging drafts of the agreements followed. A seminar with all the parties (listed above) and environmental experts took place, helping to explain the need for changing the conditions of the mining permit to the developer. The seminar was organised by ELF, but took place in office of Lepik & Luhaaar.

The final agreement was concluded on February 13, 2004. According to the agreement, Merko Kaevandused was obliged to present an application to the MoE with a request to change the conditions of the mining permit (mainly measures for monitoring the water level were added with the obligation to stop the mining when negative effects appeared), and ELF was obliged to withdraw the court suit.

Table 1 — Timeline of the administrative proceedings, court proceedings and negotiations



Toomas Luhaaar guided the negotiations as a representative of OU Merko Kaevandused, but naturally acted in interests of his client. At the same time, his advice was professional and helped ELF to overcome problematic legal issues like the procedure for concluding the agreement (as opposed to other similar negotiations in which ELF participated, the agreement was affirmed by the court).

Related actions and campaigns

There were no related actions or campaigns.

Final outcome of the case

As a result of the agreement, the court proceedings ended on February 16, 2004. The permit was changed in March 2004. ELF has no information about the further activities of Merko Kaevandused in fulfilment of the conditions of agreement as ELF had no resources or capacity to monitor the developments.

Conclusions

The outcome was a compromise for both parties, which means that neither of them was fully satisfied with the outcome. For ELF the important issue of new oil-shale mines was left unsolved.

The most problematic issues were the lack of time and expertise on environmental issues (hydrological in this case). A pattern of behaviour appeared whereby the negotiations sped up before the court session or date for appealing the court's decision, reaching a high point just a few days before the session or deadline for appeals. This rush represented a great deal of pressure for the Estonian Fund for Nature, making the entire process quite painful and troublesome.

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