

Portuguese Supreme Court orders 4 wind turbines removed

Author: Supremo Tribunal de Justiça

Wind turbine #2 is at a distance of 321.83 m from the house and 182.36 m from the stables; wind turbine #3 at 539.92 m and 439.64 m, respectively; wind turbine #4 at 579.86 m and 565.50 m; and wind turbine #1 at 642.08 m and 503 m.

Before November 2006, Quinta was a quiet and peaceful place, with little human presence in the surrounding area, and limited human presence at the site itself – only birds, vegetation, and trees. Before November 2006, the plaintiffs never reported the existence of insomnia, difficulty sleeping, or sleep disturbances. After the start of operation of wind turbines 1, 2, 3 and 4, the plaintiffs have reported the existence of insomnia, sleep difficulties, and sleep disturbances. ... After the commissioning of the wind turbines, the 1st plaintiff had complaints of mood changes, fatigue, headache, and hypersensitivity to noise. The remaining members of the household had similar but less severe complaints. ...

The right to rest, tranquility and sleep are aspects of the right to humane treatment (Article 25, para. 1 of the Constitution of the Republic of Portugal), which is part of established fundamental rights, the collection of rights, freedoms, and guarantees. These personality rights are well protected against any unlawful interference, not necessarily in blame for an offense in intent to harm the victim, but in the offense itself.

The right to rest is offended even though the activity of operating the wind farm in question has been officially authorized. The fact that noise regulations are respected does not mean that it is allowed to affect the rights to rest and health. The wrongfulness, in this perspective, obviates measurement of the noise level by legal standards: The illegality of a noisy behavior that harms the rest, tranquility, and sleep of others is precisely the fact that unjustifiably and beyond socially tolerable limits is injurious to the rights integrated in the bundle of rights, freedoms, and guarantees.

Indeed, “the consecration of a maximum sound level of noise just means that the administration can not authorize the installation of equipment or grant licensing of activities that do not respect that ceiling, and disregard of this limit is considered a violation of a regulatory ordinance.” That is, “the General Regulation on Noise only have effects within the administrative activity and in scope, and may not interfere with the protection of personality rights of the people, whose protection is not exhausted in the noise limit established in this law.”

Collision of Rights

On one side is the right to rest, personality, absolute, inviolable, and enrolled in the framework of rights and freedoms ...

On the other side, according to the position of the defendant, are constitutionally protected community values, particularly the achievement of the public interest, the

unquestioned value of wind turbines as a source of clean energy and that the defendant represents a clean energy industry and thus a defender of the environment. ...

Having been established that the 1st plaintiff lives and works full time at Quinta, the 2nd plaintiff is domestic (ie working from home), the social life of the family is passed at Quinta, and the two minor children study at Quinta outside school hours, this means that exposure to noise occurs not only at night but also during the day, causing sleep problems at night but constituting disturbed living throughout the day, caused by the noises and flashing shadows as a result of the activity of the wind turbines, physical and mental wear on the plaintiffs' persons throughout the day.

For this reason, the decision to suspend the wind turbines only from dusk to dawn is unacceptable. ... In fact, although not proven that the noise is less in the day than during the night, if the wind turbines are not turned off, it is clear that the violation of personality rights is also observed during the daytime, causing anxiety and physical and psychological distress in the whole family.

For this reason, a clear prevalence of personality rights requires the suspension/removal of all the wind turbines in question. ...

DECISION:

For these reasons, in dismissal of the defendant's case, and the partial granting of the plaintiffs', it is ordered that the defendant:

- a) Suspend the total operation of wind turbine nos. 1, 2, 3, and 4 of the wind farm in the daytime and nighttime, and that the defendant, therefore, remove them.
- b) Pay the plaintiffs as compensation the sum of thirty thousand euros.

Lisboa, 30 de Maio de 2013
Granja da Fonseca (Relator)
Silva Gonçalves
Ana Paula Boularot

(Read the judgement, in Portuguese, here:

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/4559d6d733d1589780257b7b004d464b>)