

Coat of Arms
Republic of Albania
Administrative Appeals Court

Basic Registration No. 210/132/29 (31021-02855-86-2016) Decision No. 148(86-2018-3891)

Registration Date. 09.06.2016

Date of Decision 04.10.2018

Decision

In the name of the Republic

The Administrative Court of Appeals, sitting as a bench consisting of:

Presiding Judge: Rilinda SELIMI

Member: Artur MALAJ

Member: Lindita SINANAJ

[...]

[pages 10-11]

From the acts of the trial at the first instance, it turns out that the initiation of the judicial proceeding and the raising of the things sought in the object of the lawsuit are [lit. is] motivated by the plaintiffs as a case of the public interest in protection of the environment on the claims that this development of the territory in the area of the lake, part of the Green Crown of Tirana, a protected area, has violated [their] right as residents to prior consultation in environmental issues involving [lit. at] the city and also [that] the authorisation of the works was given [lit. permitted] in violation of the respective legal framework: law no.10321 dated 09.06.2011 [lit. 20 II] "On protection of the environment", law no. 107/2014 "On planning and development of the territory", law no. 10448 dated 14.07.2011 "On environmental permits", law no. 91/2013 "On strategic environmental assessment", law no. 10440 dated 07.07.2011 "On Environmental Impact Assessment" and subordinate legal acts in their implementation..

The Administrative Court of Appeal finds [it should] cite that, according to written document prot. no. 570/1 dated 23.03.2016, the National Agency of the Environment (NAE) gives the information that: " ... *no application has been made at the NAE [Alb. acronym AKM] for "Construction of the pilot project for the games area [lit. corner] for children, at the park of the artificial lake of Tirana".* According to written document prot. no. 1291/1 dated 01.03.2016, the Ministry of the Environment returned the answer that the project "Games area for children" was not listed in appendices I and II of law no. 10440 dated 07.07.2011 "On the assessment of environmental impact", amended.

The Administrative Court of Appeal judges that the claims of plaintiffs of the illegality of the administrative actions of the defendant parties cannot constitute sufficient reasons for accepting the object of the request to secure the lawsuit [i.e. indicate interim measures], for which criteria are required according to according to the definitions in articles 28 and 29 of Law [no.] 49/2012. The plaintiffs argue that the works are carried out

on the basis of a contract entered into for realisation of the Games Area for Children and has resulted in destruction through cutting down the trees of the territory under development and then its paving with concrete without proving, analysing and arguing the nature of the works, their volume and extent in relation to the claimed serious and irreparable impact on the environment of the protected area of the Green Crown of Tirana, a part of which is the park by [lit. of] the lake.

The Administrative Court of Appeal judges that concrete data are not set out either by plaintiffs in the appeal so as to be able to indicate the danger brought to the environment of the area by the performance of this work or [lit. and] whether measures have been defined in development for its rehabilitation. For the above reasons, it is considered that the performance of the works in the framework of rehabilitation of the park by the lake has been authorised by the NCT [National Council of the Territory, Alb. acronym KKT]. In the judgment of the Court, the plaintiffs do not succeed in proving that the biodiversity and natural environment of the Green Crown of Tirana will be seriously damaged, in an irreparable manner, by the process, at the end of realisation of the works of the Games Area for Children in the area of the Lake of Tirana.

In conclusion of the above, the Administrative Court of Appeals considers that the appeal of the plaintiffs does not contain any legal grounds for vacating the decision of the Administrative Court of First Instance of Tirana which refused their request for interim measures, thus arriving at the conclusion that that court's decision should be left in force.

[pages 10-11]

Nga aktet e gjykimit ne shkalle te pare rezulton se iniciimi i procesit gjyqesor dhe ngritja e kerkimeve objekt padie motivohet nga paditesit si ceshtje e interesit publik ne mbrojtje te mjedisit mbi pretendimet se ky zhvillim i territorit ne zonen e liqenit, pjese e Kurores se Gjelber te Tiranës zone e mbrojtur, u ka cenuar te drejten si banore per konsultim paraprak ne ceshtje mjedisore te qyteti si dhe, autorizimi I punimeve eshte lejuar ne shkelje te kuadrit ligjor respektiv: ligjit Nr. 10321 date 09.06.20 II "Per mbrojtjen e mjedisit"; Ligjit Nr. 107/2014 "Per planifikimin dhe zhvillimin e territorit", Ligjit Nr. 10448 date 14.07.2011 "Per lejet e mjedisit", Ligjit Nr. 91/2013 "Per vleresimin strategjik mjedisor" Ligjit nr. 10440 date 07.07.20 II "Per vleresimin e ndikimit ne mjedis" dhe akteve nenligjore ne zbatim te tyre.

Gjykata Administrative e Apelit verën te citoje se, sipas shkreses nr. 570/1 prot, date 23.03.2016 Agjencia Kombetare e Mjedisit informon se: " ... prane AKM, nuk eshte bere asnje aplikim per, "Ndertimin e projektit pilot te kendit te lojrave per femije, ne parkun e liqenit artificial te Tiranës ". Sipas shkreses nr. 1291 /1, date 01.03.2016, Ministria e Mjedisit ka kthyer pergjigje se projekti "Kend lojrash per femije" nuk eshte i listuar ne shtojcat I dhe II te ligjit nr. 10 440, date 07.07.2011 "Per vleresimin e ridikimit ne mjedis", te ndryshuar.

Gjykata Administrative e Apelit vlereson se pretendimet e paditesve per paligjshmeri te veprimeve administrative te paleve te paditura nuk mund te perbejne arsye te mjaftueshme per pranimin e objektit te kerkeses per sigurimin e padise, per te cilat kerkohen kriteret sipas percaktimeve ne nenet 28 dhe 29 te ligjit 49/2012. Nga paditesit citohet se punimet kryhen ne baze te kontrates se lidhur per reali zimin e Kendit te Lojrave per Femije dhe ka rezultuar ne shkaterrime permes preljes se pemeve te territorit ne zhvillim dhe me pas betonizim, pa provuar. analizuar e argumentuar natyren e punimeve, volumin dhe shtrirjen e tyre ne raport

me ndikimin e pretenduar te rende dhe te pakthyeshem ne mjedisin e zones se mbrojtore te Kurores se Gjelber te Tiranes, pjese e te ciles eshte partku i liqenit.

Gjykata Administrative e Apelit vlereson se pretendimet e paditesve per paligjshmeri te veprimeve administrative te paleve te paditura nuk mund te perbejne arsye te mjaftueshme per pranimin e objektit te kerkeses per sigurimin e padise, per te cilat kerkohen kriteret sipas percaktimeve ne nenet 28 dhe 29 te ligjit 49/2012. Nga paditesit citohet se punimet kryhen ne baze te kontrates se lidhur per reali zimin e Kendit te Lojerave per Femije dhe ka rezultuar ne shkaterrime permes preljës se pemeve te territorit ne zhvillim dhe me pas betonizim, pa provuar. analizuar e argumentuar natyren e punimeve, volumin dhe shtrirjen e tyre ne raport me ndikimin e pretenduar te rende dhe te pakthyeshem ne mjedisin e zones se mbrojtore te Kurores se Gjelber te Tiranes, pjese e te ciles eshte partku i liqenit.

Ne perfundim te sa me siper Gjykata Administrative e Apelit vlereson se ankimi i pales paditese nuk permban arsye ligjore qe bejne te ceneshem vendimin e Gjykates Administrative te Shkalles se Pare Tirane per refuzimin e kerkeses per marrjen e mases se sigurimit te padise, ndaj arrin ne perfundimin se ky vendim duhet te lihet ne fuqi.