

Annex 14

The Republic of Albania
The Administrative Court of First Instance
Tirana

Reg. No. 3578 31103-03344-80-2016

Reg. Date 26.04.2016

Decision date 12.05.2016

DECISION

“In the name of the Republic”

The Administrative Court of First Instance Tirana, represented by:

Judge: Selvie Gjoçaj

Assisted by the court secretary Anisa Zoto, in Tirana, on May 12th 2016, presented before the court the administrative case no. 3578 (31103-03344-80-2016) act, with the:

CLAIMANT:

1. Anxhela Hoxha, daughter of Refail and Liri, born in Tirana, on May 23rd 1979, resident of Tirana, “Hoxha Tahsim” Str., Building. no. 273, 1st Floor, Apt. no. 15.
2. Artan Manushaqe, son of Astrit and Alije, born in çorovodë Skrapar, on June 6th 1980, resident of Tirana, “Teodor Keko” Str. (Unaza e Re).
3. Andi Tepelena, son of Bardhyl and Jeta, born in Tirana, in 1972, resident of Tirana, “P.Tershana” Elbasani Str. (behind School for Foreign Languages).
4. Brizilda Gjickondi, daughter of Tamara and Azbiu, born in Bucharest, Romania, on October 28th 1969, resident of Tirana, “Bajram Curri” Blvd. Buildings “1 Maji” no.4.
5. Ervin Goci, son of Tefiku and Violeta, born in Kruja, on December 27th 1982, resident of Tirana, “Naim Frasheri” Str. Building no. 61/7, 3rd Floor, Ap. no. 24.

6. Eljan Tanini, son of Arben and Majlinda, born in Tirana, on January 10th 1988, resident of Tirana, “Durresti” str. Building no. 220, 1st Floor, Ap. no. 6.

7. Rezarta çauhaj, daughter of Veis and Ferzilete, born in Vlora, on June 16th 1990, resident of Tirana, “Dora D’Istria” Str. Building no. 12/1, 1st Floor, Ap. no. 7

Represented in the court of law by Attorney Dorian Matlija, member of the Albanian Bar Association, License no. 2621, Nipt. K81328030G, appointed as announced in session.

DEFENDANT: The Municipality of Tirana, “Dëshmorët e Kombit” Blvd., represented in the court of law by Mrs. Glenda Zeneli, appointed with authorization no. 13242/1 protocol, dated 03.05.2016.

The National Council of Territory (NCT), the Council of Ministers, represented in the court of law by Mrs. Floralda Alimehmeti assigned with the duty of Supervisor of the Department of Legislation in the Agency for Development of Territory, appointed with authorization no. 782 protocol, dated 03.05.2016.

“Star Tek” Sh.p.k., NUIS L22327007, represented in the court of law by Lulëzim Mehmetaj, “Tish Dahija” Str. Building “Rati”, 1st Floor, municipality no. 5, Tirana (in absence).

“Riviera” sh.p.k., NUIS J66903244, represented in the court of law by its administrator Dritan Cela, “Themistokli Germeñji” Str. No. 3/2 (in absence).

In the presence of the State Attorney, represented in the court of law by State Attorney, Mr. Elton Hysko.

CAUSE OF ACTION: Securing [i.e. granting a stay of execution / interim relief] the lawsuit that demands the discontinuity of the construction permit issued on March 3rd, 2016, for the object “Children’s Amusement Park, pilot project 4, with the scope of rehabilitating the Lake Park Tirana,” granted to the developer, the Municipality of Tirana. Taking additional measures for securing the lawsuit, immediately discontinuing the construction work of the Municipality of Tirana and its subcontractors in an area with national significance, the Green Crown of Tirana, specifically the Cadastral Area no. 8280, estate no. 2/283 (construction area), for

the Project “Children’s Amusement Park” procured from the Municipality of Tirana.

Recognising the absolute invalidity of decree no. 1, dated on February 12th 2016 of the National Council of Territory for the approval of construction authorization for the object “Children’s Amusement Park, pilot project 4,” with the scope of rehabilitating the Lake Park, from the Municipality of Tirana.

Recognising the invalidity of the construction permit, dated on March 3rd 2016 of KKT issued to the developer, the Municipality of Tirana.

Recognising the invalidity of the construction permit, dated on March 3rd 2016 of KKT, issued to the developer, the Municipality of Tirana for the object of “Children’s Amusement Park, pilot project 4,” with the scope of rehabilitating the Lake Park, the Municipality of Tirana,” based on VKT no.1, for estate development found in Cadastral Area no. 8280 with property no. 2/280; property no. 2/281 and property no. 2/283; deeming the invalidity of the procurement procedure for the construction work for the object Children’s Amusement Park,” funded with 67 983 445 Lek (no VAT included), bulletin no. 49/2015.

Recognising the illegality of construction work of the developer, the Municipality of Tirana, the construction work is carried in an area with national significance, the Green Crown of Tirana, specifically Cadastral Area no. 8280 with property no. 2/280, property no. 2/281 and property no. 2/283 (construction work), for the project “Children’s Amusement Park” procured from the Municipality of Tirana.

Ordering the Municipality of Tirana to discontinue construction work, and to return the area to its previous condition.

LEGAL BASE: Law no. 49/2012 Articles 15, 17, 28, 29 and 30 dated 03.05.2012 “For the Administrative Courts,” amended, Aarhus Convention for the public’s right to access information, to participate in decision making and to seek justice in environmental matters, ratified by Law no. 8672/2000; Law no. 10431 dated 09.06.2011 “On environmental protection”; Law no. 107/2014 “On territorial development and planning”; Law no. 91/2013 “On strategic evaluation of the territory”; Law no. 10440 dated 07.07.2011 “On environmental impact

assessment”; Administrative Act, Article 116; KKT Decree no.4 dated 29.12.2014 “On identifying the issue and the area with national significance in territorial planning, identified as the Green Crown of Tirana”; Council of Ministers Decision no. 956, dated 29.12.2014 “On identifying the Green Crown of Tirana and measures taken for its protection”; Council of Ministers Decision no. 408 dated 13.05.2015 “On the approval of territorial development guideline.”

Based on the investigations conducted by the court of law, at the moment, the final results are:

Decree no.1 dated 12.02.2016, the National Council of Territory (NCT) decided “On the approval of construction permit for the object “Children’s Amusement Park, pilot project no.4, with the scope of rehabilitation of the Lake Park, the Municipality of Tirana.” Dated 03.03.2016, the Agency for Territorial Development has issued the act “Construction Permit,” allowed for the object “Children’s Amusement Park, pilot project no.4, with the scope of rehabilitation of the Lake Park, the Municipality of Tirana,” in favor of the developer, the Municipality of Tirana. Prior, the Municipality of Tirana has developed the procedure of public procurement for the selection of the winning bid that will be responsible for the construction work of the Amusement Park Project; in conclusion it has signed the contract that allows for the construction work. The claimant Anxhela Hoxha, Artan Manushaqe, Andi Tepelena, Brizida Gjickondi, Ervin Goci, Eljan Tanini and Rezearta çauhaj, activists of “Initiative of Citizens,” an organization created to protect the Lake Park from illegal interventions from public and private subjects, claim that the acts to approve the construction permit, the construction permit, procurement procedures etc., are invalid. They have brought the case before the court demanding, among others, measures for securing the lawsuit ought to be taken to discontinue the construction permit dated 03.03.2016, for the object “Children’s Amusement Park, pilot project no.4, with the scope of rehabilitation of the Lake Park,” granted to the developer, the Municipality of Tirana and additional measure taken for the immediate ban of construction work and other efforts of the Municipality of Tirana and its subcontractors within an area with national significance, the Green Crown of Tirana and specifically, Cadastral Area no. 8280, property no. 2/280; property no.

2/281 and property no. 2/283 (construction area), for the Project “Children’s Amusement Park” procured from the Municipality of Tirana.

- Regarding measures taken to secure the lawsuit, the claimant and its representative claim that:

Their request is in reliance on Article 28 of Law no. 49/2012, dated 03.05.2012 “On the organization and functioning of administrative courts and administrative disputes.” Article 29, Law no.49/2012 explains the conditions necessary for securing the lawsuit. Below we analyze the presence of these conditions in the actual case:

1.1 A reasonable suspicion exists, based on written documents, of the possibility of causing a serious, irreparable and immediate damage to the claimants:

1. The standard of proof required is “the reasonable suspicion”

In the legal theory, there exist several proof standards:

- Reasonable suspicion;
- Reasonable faith;
- Valuable Reason;
- Reliable Evidence;
- Balance of probability;
- Clear and credible evidence;
- Beyond any reasonable suspicion;
- Beyond any trace of suspicion;

This list of standards is classified starting from the easiest and ending with the hardest. The first three standards are used for measures securing the lawsuit, the fourth and the fifth are widely used in civil and administrative processes, and the other standards are used in penal processes. We highlight that for the actual request

for measures taken in securing the lawsuit, the standard of “reasonable suspicion” is valid. This is the lowest standard of evidence to identify if a measure for securing the lawsuit is backed up with evidence. It is important to highlight that the request for securing the lawsuit is limited to a time period and is in direct relation with the initiation of the evidence that is presented. The measure is used only to prevent the possibility of serious and irreparable damage that could happen during the court proceeding and has no lasting effects. If court investigation confirms the initial suspicion and the court accepts the lawsuit, then the measure for securing the lawsuit becomes a measure with lasting effects. The evaluation of the presence of a reasonable suspicion is to be based on reasonable evidence that is sufficient of suspecting the possibility of a potential outcome that is not necessarily bound to happen.

1.2 The suspicion is based on written documents, but not limited:

The claimants have presented several written evidence, providing proof for their claims according to their version of events, rendering this version more reasonable than the version presented from the defendant.

First, there is proof that the defendant, the municipality of Tirana, has reached a decision to build an amusement park, a pilot project, within the green area of the Lake Park in Tirana.

Second, there is proof that the defendant, the municipality of Tirana, has entered an administrative contract of public procurement for building the project. Based on the electronic system of the Agency for Public Procurement evidence shows that the file of notification of the signed contract with the third party has been announced.

Third, there is proof that the defendant, the municipality of Tirana, has requested the approval of a construction permit for this public work from the National Council of Territory. This institution has approved the construction permit on condition; the condition demands respect for specific permissions. Dismissal of this condition renders the handing and appraisal of the permit impossible for the municipality of Tirana and its subcontractors to start construction work.

Fourth, publicized in every written and online media, the pilot project for the construction of the amusement park in the Park Lake of Tirana has been put into action, starting with tree cutting and ending in concrete pouring in the green area.

Fifth, there is proof that this is just a pilot project, which is expected to be followed by other similar projects in the long-term or short-term future. From the evidence offered above, there is enough written proof to convince the court of law that in the lake Park of Tirana, a protected area, continuous administrative action have contributed in the partial deforestation and transformation of this area through concrete building. The contract is signed and binding.

1.3 The possibility of causing a serious and irreparable damage

First we emphasize that the law does not require evidence beyond any doubt that a harmful and irreparable damage might occur. The law has the word “might,” meaning that the existence of a possibility is sufficient, notwithstanding that in practice the opposite might be true. The claimants hold a definitive conviction that carrying on with the construction project of the children’s amusement park in the Lake Park Tirana during the time of the court proceeding has considerable possibility to cause serious and irreparable damage. These possibilities are not excluded because:

First of all, the transformation of the Lake Park Tirana from a Natural Park into an Urban Park, will not serve for relaxation or leisure, for neither adults nor children when turned into a mix urban park. A natural park is a park where the trees are not planted in a row or in a certain order with a distance three by three or four by four meters, but when a natural fashion is used, in a chaotic and spontaneous way. A natural park is a protected landscape build with a long-term planning based on the law for forest protection. These valued landscapes have been preserved in their present condition and are promoted for their relaxing properties. A natural park is not the same as a national park, as identified from IUCN- International Union for Conservation of Nature. A natural park is not the same as a Protected Area, which could fall into different categories of IUCN. In essence, all the actions or interventions and projects are against the spirit of the natural park and are prohibited because these areas should be suitable for leisure activities, given their unique characteristics.

Secondly, pouring concrete material at the heart of the park, covering a surface of 12 000 m² and a perimeter of 2000 m, could be proceeded with the:

- Slowdown of the underground water flow that reaches the tree roots
- Slowdown of flow of the drainage to the lake
- Forever losing the green area

Building a concrete wall or covering the ground with little stones, causes a clogging in the normal flow of the underground water, partially watering the tree roots that will be left, adding to the water flood that reaches the lake (known as runoff) or earth rinsing, thus changing the existing equilibriums of the underground waters that took a while to establish. The process of concrete pouring will bring the final loss of the possibility for continuous foliage blooming.

Thirdly, numerous tree cutting in a Natural Park, until now, that is expected to continue with the project application, will decrease of the level of oxygen and increase of the level of carbon dioxide.

The fourth point, the children's amusement park could give way or create possibilities for further concrete pouring in the Lake park of Tirana with 11 eleven other projects, included in what is known as a Theme park. The Theme Park consists of 11 other projects that will require more tree cutting and the progressive effect of the aforementioned outcomes.

The *fifth point*, changes made to earth destination in this area will give legitimacy to its owners to use it, causing the disintegration of the park and transforming it into an Urban Park, in an irreversible way.

And the *sixth point*, erecting a Theme Park will weaken the positive effect that the sea breeze has on life. The breeze comes from the north (Paskuqan), travels through the main boulevard, blows into this Park and takes the role of a "natural air conditioner," that is a well known worldly fact, known as the rose of winds for the city of Tirana, built from the Institute of Geosciences and Hydrometeorology Tirana.

1.4 To legitimize a security measure for a damage that might be irreparable or hard to repair

Referring to Verdict no. 32, dated 24.11.2003, of the Constitutional Court, even when the consequences of the damage are irreparable, and the repair is challenging, the situation is treated the same as with the case of an irreparable damage. Therefore, after the concrete pouring and tree cutting, in case of the eventual approval of the suit, there could be the possibility that the concrete will be removed and the trees replanted. But the process is challenging and requires a long time period. **It is a fact that the Municipality of Tirana has made no announcement or conducted any public consultation addressing the intervention process in this protected area.** It is a fact that the Aarhus Convention and the environmental law have been violated. It is a fact that the conditional construction permission hasn't been fulfilled. It is a fact that the tender is carried on, while lacking the aforementioned fundamental conditions. It is a fact that the Lake park of Tirana entertains unique protection. Because of all these reasons, it is rather challenging for the claimants to believe that the administrative process will be deemed legal in this court proceeding. But, this process will require a couple of weeks and during these weeks damages can occur that will need decades to repair. Given the circumstances, if we aren't facing an irreparable damage, we are at least facing a damage that is hard to repair. Suspending construction work for a couple of weeks will save an enormous amount of work and loss for the citizens of Tirana.

1.5 There exists the possibility of an immediate damage

The potential damage referred above is not expected to occur after a long time, or it hasn't a clear date of when it will occur. On the contrary, the damage is happening in the current time. The contract is a fact and is binding. The contract is time binding and the first actions are the leveling of the terrain and massive concrete pouring. Then there would be the finishing. The situation is a case of emergency. Every day, the concrete mixers enter the protected area loading massive meter square of concrete, diminishing the green area. Until the conclusion of the investigation, this surface is at a significant risk of shrinking. There is a public declaration of the mayor of the municipality of Tirana that the park will be

opened on June 1st 2016, celebrating children's day. There are 25 days left until the construction work ends. After 25 days the damage occurred will be complete, that proves that the damage is immediate.

2. The public interest is not seriously violated

Article 29 Law no. 49/2012 doesn't just require that the public interest is not violated, but highlights that this public interest must not be "seriously" violated. In this regard, if the public interest is not seriously violated, this is not sufficient to not undertake the measure for securing the lawsuit, as requested by the claimants. In the actual case the public interest is not "seriously" or "not seriously" violated because:

First of all, the objective of the actual administrative activity is the construction of an amusement park for children, which doesn't have a living significance, or without which the public interest would be seriously violated. We are not facing the case of building a medical center, or a fire department, or a police station, etc. The amusement park for children, if the municipality of Tirana is acting according to law, will be simply delayed for a couple of weeks, or less, the time period needed for an administrative process according to Law no. 49/2012. During this time, children could play and entertain themselves in other areas, where they have done before, since the day of Independence, in 1912.

Secondly, the decision of the municipality of Tirana, to inaugurate this park on June 1 doesn't significantly concern the public interest; not inaugurating the park will not cause serious consequences to the public interest. June 1 has a certain symbolism attached to it, but not significant. This date isn't connected to a specific practical and living necessity, but is only a formal significance for the inauguration day. The court shouldn't be affected from this target date, while the value of the serious and irreparable damage exceeds the value and symbolism of the date of inauguration, tremendously. This date could be easily substituted with another date, such as the Universal Day of Children on November 20, as suggested from the United Nation or Summer Day on March 15 etc. June 1, as a date, is not necessary to the public interest, but it is rather a whim, so there is no necessity or need to fulfill the contract.

Thirdly, the public interest is more in favor of protecting the Lake Park of Tirana. The lawsuit filed is a unique case. It consists of a class action and is recognized from our legislation only for environmental protection cases. It is the only case when even one member of the public can file a lawsuit representing everyone's interest. This unique legitimacy has a strong logic foundation. The mandate of a public authority is limited, in the actual case it is four years. Meanwhile, environmental interferences do not have consequences that last for four years, but they incur long term and even permanent costs. It is crucial for us, the earth citizens, to inherit a good environment to the future generations. Everyday, we are witnessing the degradation of the nature around us, from the unconscious interventions based solely on short-term economic benefits. For these precise reasons, to allow court intervention against these actions, the law has predicted and given everybody the possibility that possesses a righteous conscience, to protect the environment that belongs to everyone, now and for the future. **The public interest of the municipality of Tirana is to build an amusement park for children. The public interest of the claimants is to protect the Lake Park of Tirana and guarantee its integrity, for the children, for the grownups, and the elderly, or for those children that will not be able to play in that park for some weeks, but that maybe will derive lots of joy from the park when they become adults or grow old. The balance seems clear and is leaning toward the claimants. The public interest, is not seriously or non-seriously violated, but is protected even more.**

3. Other appropriate measure for securing the lawsuit

In reliance on Article 30, Law no. 49/2012 the court is requested to take both measures for securing the lawsuit, simultaneously, as listed above. The suspension of implementation of the administrative act, other appropriate measures are required, as is the suspension of implementation of administrative contract between the municipality of Tirana and its contractors for the construction of the amusement park. This is done because suspension alone does not offer sufficient protection. Suspension of construction permit does not automatically and immediately stop the application of actions designated in the contract above. For these reasons, the court must also vocally suspend these actions.

4. Court practices regarding the suspension of the execution of the administrative action

The constitutional court declared in Verdict no. 32 dated 24.11.2003 that: “The right of suspension of the administrative act, object of the court proceeding, in reliance on article 42/1 of the Constitution... within the parameters required from the disposition above, and Article 6 of the European Convention for Human Rights.” The stance for suspension of administrative actions often finds approval from the court. We could bring to attention illustrative cases such as: Verdict no. 14241 act dated 19.07.2012 of the District Court of Tirana, which comes into power with Verdict no. 92 dated 02.04.2013 of the Court of Appeal Tirana; Verdict no. 11887 act dated 26.07.2011 of the District Court of Tirana that comes into power with Verdict no. 176 dated 15.02.2012 of the Court of Appeal Tirana.

Based on these arguments, the claimants and their representatives demand the approval of their requests to take measures to secure the lawsuit and the taking by the court of other additional appropriate measures.

[The defendant]

Regarding the request for the taking of appropriate measures for securing the lawsuit and the taking of additional measures for securing the lawsuit, the representative of the defendant, the municipality of Tirana, presented the rejection below:

The request of the claimants to take measures for securing the lawsuit is not based on evidence and is non-compliant with the law, because:

First, in reliance on Article 28, law no. 49/2012 “On the organization and functioning of Administrative Courts and the adjudication of administrative disputes” amended, securing the lawsuit as a legal measure aims at regulating a factual situation that incurring a serious and irreparable damage, that is caused by the execution of the administrative action. The damage must be final, there is the possibility of damage. We clarify that the work has started according to the construction permit dated 03.03.2016 with verdict no.1 “For the approval of the construction permit for the object Children’s Amusement Park, project pilot 4, with the scope of rehabilitating the Lake Park Tirana,” according to the provision of the

Law no. 107/2014 “For developing and planning of the territory” amended and the Articles provided in this law.

Second, in reliance on Article 28 of Law no. 49/2012, the request for taking measures for securing the lawsuit should find the support of Article 29 of this law, where conditions for securing the lawsuit are identified. In reliance on Article 29, that speaks of a serious, irreparable and immediate damage, which make for three cumulative conditions that must be met from the request of the claimant side. We express that a reasonable suspicion based on written evidence that we are causing serious, irreparable and immediate damage against the claimant. We highlight the fact that the construction permit has been approved on March 3rd 2016, from this moment onward the construction work, conducted from the municipality of Tirana with the scope to rehabilitate the Lake Park, has commenced. So the damage, pretended from the claimant, is not immediate, because a relatively long time has passed from the date of receiving the construction permit and the commencement of the construction work, up to now. The claimant has not presented written evidence to prove the serious and irreparable damage that it claims is suffering, and all the assumptions presented in the lawsuit, to reason why there must be measures taken to secure the lawsuit are lacking in evidence and nonexistent. Besides offering proof that the damage is serious and irreparable, there also must be proof that deems the damage as real and tangible.

Addressing the issue that during the construction work many trees will be cut off, the claimants have not brought forth any written evidence. Contrary to what is assumed from the claimant's party, the effects result from a construction permit, approved from KKT that meets every condition. Furthermore, contrary to what is pretended by the claimant that work will be conducted without environmental authorization, with the written documentation no. 129/1 dated 01.03.2016, The Ministry of Environment has issued an answer, confirming that the project “Children’s Amusement Park” is not listed in the appendix I and II of Law no. 10 440 dated 07.07.2011 “On Environmental Impact Assessment” amended. The actual case does not need an environmental authorization.

Referring to the written document no. 390/01 dated 02.03.2016 through which the National Agency for Development of Territory has issued the response giving

permission for the children's amusement park in the Lake Park of Tirana, has also clarified that this project is part of the strategic planning designed for the park, conducted through a process "Consulting service," from the Albanian Fund for Development. The strategic planning is followed by the National Agency for Development of Territory, in collaboration with Albanian Fund for Development based on an agreement act signed on January 23rd 2015. Meanwhile, the Consulting Service is required from the Albanian Fund for Development for "Designing the strategic planning of the Lake Park Tirana and five other pilot projects."

The strategic plan for the Lake Park is deemed to be responsive to the terms of references. The National Agency for Development of Territory (acronym AKPT) highlights that confirmation is granted for the project prior to entering the application procedures for obtaining construction permit, and because of this, it wasn't necessary to be announced in the verdict of KKT the condition of obtaining the confirmation from the AKPT. The court cannot decide the taking of measures securing the lawsuit if the public interest is seriously damaged. To clarify, if measures for securing the lawsuit would be taken, the public interest would be violated, because the application of this project aims at satisfying the public interest. The Artificial lake Park of Tirana is a territory that servers the general public, and the municipality of Tirana is applying the renovation plan for its rehabilitation. The measures for securing the lawsuit must be related to the object in the filed suit. In the lawsuit, the claimant request the absolute invalidity of the act, ordering the municipality of Tirana to stop further construction work as they are deemed illegal and the turning of the object to its previous condition. Taking measures for securing the lawsuit cannot be requested for this object. A measure for securing the lawsuit cannot order the defendant to obey the claimant's request and it is rejected from the defendant.

Regarding the above arguments, the representative of the defendant demanded the rejection of the request for securing the lawsuit, deeming it non-compliant with law and not based on evidence.

Regarding the request for taking measures for securing the lawsuit and taking additional measures for securing the lawsuit, the representative of the defendant

Council for Regulation of the Territory (KKT) asks for the rejection of the request, invoking the following grounds:

In reliance on Article 29, Law no. 49/2012, dated 03.05.2012 “On the organization and functioning of Administrative Courts and the adjudication of administrative disputes,” the request for taking of the measures for securing the lawsuit, and conditions for securing the lawsuit, are inevitably related to the conditions provided in this Article.

Firstly, the claimant has not issued a written document that proves that a serious, irreparable and immediate damage exists. The claimant, has not issued any written document (map, location plan etc.) that prove its claim of “destruction or damage” that would be caused as a consequence of the project. The verdict no.1 issued from the Council for Regulation of the Territory “On approval of the construction permit for the object “Children’s Amusement Park, pilot project 4, with the scope of rehabilitating the Lake Park, Municipality of Tirana,” that has decided *approval on condition* of the construction permit for the aforementioned object (procedure that is in reliance on Article 25 “Examining requests for construction permits that are approved by KKT,” point no.7, Law no. 107/2014 “”On planning and developing of the territory”, amended.) According to point no.3, letter “a,” of the decision above, the condition is required to complete the filing of the technical and legal documentation, and receiving the confirmation from the National Agency for Territorial Planning from the Ministry of Environment.

Meanwhile, the construction permit issued for the project of rehabilitation of the Lake Park, does not include the construction of a multi-storied apartment building that could be causing irreparable damages to the green landscape and through which only a few would have benefited. On the contrary, the project consists of a an amusement park for children, a category that is on the focus of the political initiatives of the municipality of Tirana, and a group that has not been able to enjoy entertainment in the capital city, ending up in shopping centers instead. What’s more, the approved project, in the actual case there isn’t an expected damage in the disposition cited above, because we are dealing with a development that will be coexisting with the surrounding natural landscape. Through this development, the municipality of Tirana does not aim the reduction of the green landscape, on the

contrary, as it is designated in the project paper, that we are attaching with it (copy derived from the original), there will be no tree cutting, but only displacement of four trees, while it will be accompanied with planting of new trees, that on the whole will complete environment. Lastly, judging the request for securing the lawsuit, it is necessary that the doubt or fear are demonstrated, so that the execution of the decision on the right that is required for protection would be impossible, or hard, causing an *irreparable damage*. In the actual case, this obligatory condition is not met, because we are dealing with an administrative act (i.e. construction permit), approved from a government collegial body (KKT), in favor of local government body (i.e. the municipality of Tirana, as a developer), that possesses the necessary tools and has the possibility, that in a hypothetical case scenario could return the territory in its previous condition (a fact that appears indirectly even in the claimant's argument when it states in one of the lawsuit's point "...returning the territory to its previous condition."

Secondly, regarding the public interest, it is apparent that suspension of this administrative act would violate the public interest, because the act affects a considerable number of community members, like the children, given that the object of the act is to build an amusement park for children. Because of the importance that these members of the community have with the municipality of Tirana, putting children on focus, it proposed the building of an amusement park in the Lake Park area, since this area lacks any recreational atmosphere dedicated to them.

Thirdly, the last condition provided in the legislation, for taking the measure for securing the lawsuit, it consists of ..."*the claimant gives a guarantee (if seen necessary by the court), in the type and amount set, for the damage that might be caused to the defendant from securing the lawsuit.*" We clarify the court that the Municipality of Tirana, after finalizing the procedure of procurement, has entered a binding contract for the building development with the construction subjects (a fact known and accepted from the claimant in the lawsuit), meaning that the claimant must give a guarantee in a considerable financial amount, because in the actual case the financial damage that the defendant could suffer if the construction work is suspended (referred in the contract value), is high.

Lastly, in the actual case the claimant's arguments presented in the request for taking measures for securing the lawsuit, has only presented some clarifications, or interpretations that consists of uprooting the case and digging up solutions, that go against with the identification offered from the Supreme Court in Unified Verdict no. 10/2004.

Considering the request for taking measures for securing the lawsuit and taking additional measures for securing the lawsuit, the state attorney solicited the rejection of the request on the basis of the following arguments:

“In reliance on Article 29, law no. 49/2012, the first condition contains several points that must be fulfilled simultaneously a) a reasonable suspicion exists, based on written documents, of a possible damage that is:

- 1- serious;
- 2- irreparable;
- 3- and immediate to the claimant;

Concerning the reasonable suspicion, based on written documents, the claimant does not present any evidence. The only evidence presented is the acts that refuse the judicial object, that do not confirm any claims made by the claimant. There is not a single sentence in the request for securing the lawsuit explaining the damage that is incurred by the claimant even though this damage is serious, irreparable and immediate.

And referring to the claim that there is a final decision: without a strategic environmental assessment; without an environmental declaration; without the assessment on environmental impact; without an environmental permission; this claim does not stand because:

The Ministry of Environment, written document no. 1291/1 protocol, dated 01.03.2016 explains that “the project for the construction of the children's amusement park, pilot project 4, with the scope of rehabilitating Lake Park Municipality of Tirana,” is not listed in the appendix I and II of Law no. 10440, dated 07.07.2011 “On Environmental Impact Assessment,” amended.

Moreover, this claim cannot be considered because of the foundation of the case. This position goes against the unified verdict no. 10 dated 24.03.2004 of the Unified College of the Supreme Court. So we are not dealing with a reasonable suspicion, based on written document, to take the measures for securing the lawsuit.

Concerning the damage that is irreparable and immediate, the claimant explains that: there are irreversible damages against the environment; damages against the community, and damages against the quality of life. This claim is rejected from the claimant itself that says that: the area could be turned in the previous condition, but bearing a high cost for the state's budget and for the public interest, consequently. So, this is evidence that the damage is reversible. Stopping at cost, in reliance on Article 29/c law no. 49/2012 we demand that claimant gives a monetary guarantee. This guarantee is necessary because: If the securing of the lawsuit is approved, the construction work will be suspended and there is the risk that construction work will not be ongoing as the construction permit dated 03.03.2016 is valid for six months, since the beginning of the construction work. Suspension of site work will cause damage to the construction materials, and penalty fees paid to the construction firm due to the extension of site work, including payment of workers' wages and social benefits.

Therefore, the claimant has not identified the interest that has been affected and the extent of expected damage value, and reasons why the damage is irreparable and irreversible. The claimant has not filed written documents, presenting evaluations for a reasonable suspicion that a possibility exists for a serious, irreparable and immediate damage. The claimant has not identified in real terms the value of the monetary damage resulting from the application of administrative act of the judicial object.

As to the damage that is immediate, we claim that the damage claimed from the claimant in our case is not instant and immediate. The claimant says that concrete has been poured in the area. The damage claimed by the claimant. Legal work, based on construction permit, are now ongoing and we are not facing the immediate or instant element, required by the law. This fact is sufficient to reject

the request of securing the lawsuit. As to the serious violation of public interest the claimant says:

The administrative act judicial object is abusive. Administrative act judicial object is out for the public interest, an interest that will be violated if K.K.RR.T decree, out on February 12th 2016, would be suspended from the court. KKT Decree no. 1, dated 12.02.2016 has been issued according the competencies and procedures provided in the law, and according to the law it is the only public body that deems whether there is a public interest in designated territories or areas with national significance.”

Based on these arguments, the state attorney requested a rejection of the request to secure the lawsuit, as not based on law or evidence.

The Court

Based on the presented claims, evidence, rejections, and the legal provisions, the court values the request of the claimant, for taking measure to secure the lawsuit, as not based.

Article 29 law no.49/2012 “On the organization and functioning of Administrative Courts and the adjudication of administrative disputes,” “Conditions provisions for securing the lawsuit” expects: *“the court decides to secure a lawsuit if the following conditions are met:*

- a) a reasonable suspicion exists, based on written documents, of the possibility of the causing of a serious, irreparable and immediate damage to the claimant;*
- b) the public interest is not seriously violated;*
- c) if it is seen necessary by the court, the claimant gives a guarantee, in the type and amount set, for the damage that might be caused to the defendant from securing the lawsuit.”*

Article 30 law no.49/2012 “On the organization and functioning of Administrative Courts and the adjudication of administrative disputes” “Types of measures for securing the lawsuit” expects: *The lawsuit is secured through:*

- a) the suspension of implementation of the administrative act, administrative contract or other administrative action;
- b) the taking by the court also of other appropriate measures, in cases when suspension alone does not offer sufficient protection. “

In the actual case, the court deems the request for taking measures for securing the lawsuit and taking other measures, are not based because:

The taking of the measure for securing the lawsuit aims to protect the current judicial situation among the parties, suspending the execution of the administrative act that causes changes to the situation, or the taking of additional appropriate measures, from the court, in cases when suspension only doesn't offer appropriate protection, until the fundamental conflict between the parties is resolved. The existing claims and evidence offered by the claimants, there is no proof of the existence of necessary conditions that are in reliance on Article 29 Law no.49/2012 “On the organization and functioning of Administrative Courts and the adjudication of administrative disputes” cited above for the taking of measure for securing the lawsuit or taking of additional measures for securing the lawsuit. More evidently, the claimants requested to take as a measure of securing the lawsuit the suspension of the construction permit dated 03.03.2016, for the object “Children’s amusement park, pilot project 4, with the scope of rehabilitating the Lake Park,” granted to the developer, the municipality of Tirana; and an additional measure, the immediate work suspension of the municipality of Tirana and its subcontractors inside the area of national significance, the Green Crown of Tirana and specifically the Cadastral Area no.8280 with property no. 2/280; property no. 2/283 (construction area), for the Project “Children’s Amusement Park” procured from the municipality of Tirana. The data presented and the total evidence did not convince the court that taking these measures is necessary. Reasoning as below:

Firstly, at the court’s conviction the evidence offered is not sufficient to prove the claimants’ doubt that they would suffer a serious, irreparable and immediate damage. **Article 29 law no.49/2012 provides for a damage that is serious, irreparable and immediate, three existing conditions that must be cumulatively met. The claim of a serious and irreparable damage ought to also mean a damage that is immediate for the claimant, tangible and non-**

hypothetical. The claimant pretended that from the execution of the acts judicial object serious damage would be suffered from the environment like the concrete pouring in the park, the slowdown of flowing of underground water reaching the tree roots, the slowdown of wastewater, the forever loss of the green area etc. To prove these claims, the claimants offered as evidence only opposing acts of judicial object. Meanwhile, to prove that the type of work, the volume, environmental impact etc. are connected with the claimed damage, they offered several photocopies, not complying with the law, of the object's view that is in the building process that is according to the acts of judicial object. **Similarly, according to their claims on the damages, the claimants presented a written document containing "Evaluation of the general environmental impact resulting from the construction of "Children's park" within the territory of Lake Park Tirana," dated 10.05.2016 from Prof. Sulejman Sulçe, according to it, Mr. Sulçe is certified from the Ministry of Environment in 2004 to compile an evaluation reports on environmental impact. So, this certificate was not compiled according to the law, and what is more the evaluation act should have been followed by a document confirming that Mr. Sulejman Sulçe is currently practicing his activity for evaluation of environmental impact, as required by the provisions of the existing laws.** Concerning the whole analysis of the evidence, the court reckons that there **is no evidence of the claimed damage** and subsequently, of the conditions that must be met, namely that the damage should be serious, immediate and particularly irreparable. **Moreover, concerning the criteria of the "immediacy" of the claimed damage, from the parties' approvals during the court process, including the claimants, we are not dealing with construction work that is recent, the work and other activities have started long time ago, and they are almost in their final stage.** While, regarding claimants' arguments on the fact that the damage is related to incompleteness from the defendants, during the procedure of declaration of judicial object acts, of the necessary documentation, and especially the one concerning the environmental impact from the construction work, this is an argument, its merit based on the proceeding of the case to its foundation, meaning only a proceeding that is basically complete, competent and objective, regarding judicial object acts that would create to the court the conviction regarding its merits, this stance is in

accordance to the Unified Verdict no.10 dated 24.03.2004 of the Unified Collegiate of the Supreme Court.

Secondly, regarding the other legal condition to not violate the public interest, the court values that taking the measure for securing the lawsuit suspension of the construction work dated 03.03.2016 for the object "Children's amusement park, pilot project 4, with the scope of rehabilitating the lake park," **granted to the municipality of Tirana and the taking of additional measures for securing the lawsuit through the immediate suspension of the construction work and activities of the municipality of Tirana and its subcontractors, will violate the public interest, because the judicial object act (decree of KRRT and construction work) and work that is developed for its construction affect a large number of people in the community, as are the children,** given that their object is the construction of an Amusement Park for Children.

***Thirdly*, the claimants didn't express readiness regarding the possibility of making a guarantee, in the capacity and the form set from the court, for the damage that could be suffered from the claimant from taking the measure for securing the lawsuit and additional measures for securing the lawsuit.**

In conclusion, regarding all the arguments presented above, the court values that the claimants' requests are not compliant with law and not based on evidence, and so they must be rejected.

FOR THESE REASONS

In reliance on Articles 28,29,32 of law no. 49/2012 " On the organization and functioning of Administrative Courts and the adjudication of administrative disputes,"

I DECIDE

- To refuse the requests demanded by Anxhela Hoxha, Artan Manushaqe, Andi Tepelena, Brizida Gjikondi, Ervin Goci, Eljan Tanini and Rezarta Caushaj for the taking of measures for securing the lawsuit and taking additional measures for securing the lawsuit, as not based on law and evidence.

- A special complaint, with the Court of Appeal of Tirana, is allowed against this decision, within five days, starting from tomorrow, the day of announcement. For the defendant that are not present, this time limit starts from tomorrow, the day of announcement.
- The decision must be announced to the defendant that are absent
- Announced in Tirana on May 12th 2016

SECRETARY

JUDGE

ANISA ZOTO

SELVIE GJOCAJ

