



REPUBLIKA E KOSOVËS
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Prishtina, date: 15 December 2009
Ref.: Nr. MP-06/09

DECISION
on the request for interim measures
in

Case No. KI. 56/09

Fadil Hoxha and 59 Others
vs.
Municipal Assembly of Prizren

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Snezhana Botusharova, Judge
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

With Albana Sopi, as minute taker, at the Court's deliberations and voting on the Applicant's request for interim measures, which took place on 25 November 2009, in Case No. KI. 56/09, initiated by:

The Applicants

The Applicants are Mr. Fadil Hoxha and 59 others from the Municipality of Prizren.

The Opposing Party

The Opposing Party is the Municipal Assembly of Prizren.

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Overena kopija
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Subject Matter

1. The Applicants' request of 17 October 2009 to impose interim measures in case KI 69/09, filed by Fadil Hoxha and 59 "family heads of the neighbourhood Dardania",

Legal Basis

2. Art. 116 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Art. 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009 (hereinafter referred to as: the Law), and Art 52 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

The facts

3. By Decision No 01/011-3257 of 30 April 2009 issued by the Municipal Assembly of Prizren, an earlier Decision for a Detailed Urban Plan (DUP) for the neighbourhood Jaglenica (now Dardania) was amended (hereinafter referred to as: Decision of 30 April 2009). These amendments, in their relevant part, are specified in Art. 2 of the Decision of 30 April 2009, and read as follows: "In the graphical part of the technical plan in the cadastral plots ..., instead of an existing green environment foreseen in the Detailed Urban Planning, it has now been planned to construct high tower blocks, planned for families of martyrs and social cases...".

4. On 13 July 2009, the Applicants submitted a Petition to the Municipal Assembly of Prizren asking the annulment of the Decision of 30 April 2009. In that Petition the Applicants, in particular, argued that the contested Decision had been adopted contrary to the relevant Articles of the Law on Spatial Planning (No 2003/14) and the Law on Local Self-Government (No.03/L-040).

5. On 11 September 2009 the Applicants submitted the Referral to the Constitutional Court, requesting the Court to evaluate the constitutionality and legality of the Decision of 30 April 2009.

6. On 17 October 2009, the Applicants supplemented the Referral with further arguments requesting the Court to issue Interim Measures ordering the Opposing Party to suspend immediately any action or work in the plot of land concerned in order to avoid any irreparable damages

The Applicants' complaints

7. The Applicants complained that their rights guaranteed by Art. 52(2) of the Constitution had been violated, which provides that: "Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live."

8. The Applicants further complained that there is an immediate risk that the work in the plot of land concerned will cause irreparable damages to them and therefore requested the Court to issue the interim measures with immediate effect.

The Opposing Party's comments

9. The Municipal Assembly of Prizren, in its written submissions of 11 November 2009, contested the Applicants' claims as submitted in the Referral. In particular, the Opposing party argued that the Decision of 30 April 2009 was adopted in accordance with the Law on Spatial Planning and that the plot of land at issue is classified as public property, which entitles the Municipality Assembly Prizren to a well balanced and gradual development of the spatial planning of that plot.

THE CONSTITUTIONAL COURT

10. After having heard the Judge Rapporteur, Mr. Altay Suroy, and having discussed the views of the Parties as expressed in their written submissions, the Court deliberated on 25 November 2009. The Court concluded, without prejudging the final outcome of the Referral, that the Applicants have put forward enough convincing arguments proving that the request for interim measures is reasonable and justified, since the implementation of the contested Decision of 30 April 2009 may result in unrecoverable damages for the Applicants.

11. Consequently, the Court found the Applicants' request for interim measures of 17 October 2009 is reasonable and justified.

FOR THESE REASONS

The Court, pursuant to Article 116 (2) of the Constitution, Article 27(1) of the Law, and Art. 52(1) of the Rules of Procedure, by majority vote,

DECIDES

I. TO GRANT the request for interim measures for a duration of no longer than 3 months from the date of the adoption of this Decision;

II. TO IMMEDIATELY SUSPEND the execution of the "Decision for Amendment and Supplementation of the Decision of Detailed Urban Plan (UDP) of the Jaglenica Area in Prizren", adopted by the Municipal Assembly of Prizren on 30 April 2009 under No 01/011-3257, for the same duration;

III. TO ORDER the Municipal Assembly of Prizren to suspend any construction at the above location for the same duration;

IV. This Decision shall be notified to the Parties;

V. This Decision shall be published in accordance with Article 20 (4) of the Law and is effective immediately.

Judge Rapporteur

Dr. Altay Suroy

President of the Constitutional Court

Prof. Dr. Enver Hasani