



REPUBLIKA E KOSOVËS
Republika Kosova-Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

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Prishtina, date: 24 March 2010
Ref. No.: VM 09/10

DECISION
on the extension of 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

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.

Subject Matter

1. The subject matter of the case is the Applicants' request of 17 October 2009 to impose interim measures in case KI 69/09, filed by the Applicant, Fadil Hoxha and another 59 "family heads of the neighbourhood, Dardania".
2. On 25 November 2009 the Constitutional Court deliberated and concluded, without prejudging the final outcome of the Referral, that the Applicants have put forward enough convincing arguments justifying the granting of the request for interim measures, because the implementation of the Decision No 01/011-3257 of 30 April 2009 (hereinafter referred to as: Decision of 30 April 2009) issued by the Municipal Assembly of Prizren, may result in unrecoverable damages for the Applicants.
3. Consequently on 15 December 2009 the Constitutional Court issued a Decision to grant the request for interim measures for a duration of no longer than 3 months, ordering immediate suspension of the execution of Decision of 30 April 2009 as well as suspension of any construction at the Jaglenica Area in Prizren for the same duration.

Legal Basis

4. Art. 116 (2) 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

5. 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 (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..."*
6. On 13 July 2009, the Applicants submitted a Petition to the Municipal Assembly of Prizren asking for 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).
7. 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.

8. 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.

9. Up to date the Municipal Assembly has not considered the Applicants' Petition submitted on 13 July 2009.

The Applicants' complaints

10. 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."*

11. 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

12. 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 pursue a well balanced and gradual development of the spatial planning of that plot.

THE CONSTITUTIONAL COURT

13. On 15 March 2010 Judge Rapporteur, Mr. Altay Suroy proposed to the Constitutional Court an extension of duration of the request for interim measures for the period of 45 days from the date of receipt of a Decision by the Municipal Assembly of Prizren. The Court deliberated on the same date and concluded, without prejudging the final outcome of the Referral, to grant the extension of duration of the request for interim measures for a further period of 45 days from the 15 March 2010.

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, unanimously,

DECIDES

- I. TO GRANT THE EXTENSION OF DURATION of the request for interim measures for 45 days from 15 March 2010;
- II. TO EXTEND THE IMMEDIATE SUSPENSION of 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 EXTEND THE ORDER given to 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

President of the Constitutional Court

Signed: Altay Suroy

Signed: Prof. Dr. Enver Hasani