

## LAWSUIT

### PLAINTIFFS:

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### SCOPE:

1. Ascertainment of the unlawfulness of construction works of the developer, Tirana Municipality, carried out in the properties situated within the area of national importance, Tirana Green Crown, respectively, Cadastral Zone no. 8280 with Property no. 2/280, Property no. 2/281 and Property no. 2/283 ("construction site"), for the project "Children's Playground" procured by Tirana Municipality.
2. Repeal of Administrative Act "building permit" dated 12 February 2016 and no. 1.
3. Force Tirana Municipality to stop the construction work and restore the area to the previous state.
4. Adoption of a security measure for the lawsuit by imposing an immediate suspension of construction works.

### DEFENDANT:

Tirana Municipality

### LEGISLATION:

Articles 15, 17, 28, 29 and 30 of Law no. 49/2012, dated 03 May 2012 "*On the organization and functioning of administrative courts and administrative disputes adjudication*", as amended;

Law no. 8672, dated 26 October 2000 "*On the ratification of the Aarhus Convention on the right of public to have information, to participate in decision making and to address the court about environmental matters*".

Law No. 10 431, dated 9 June 2011 "*On Environmental Protection*".

Law No. 107/2014 "*On development of the territory*".

Law no. 91/2013 "*On strategic environmental assessment*".

Law no. 10440, dated 07 July 2011 "*On the environmental impact assessment*".

## **I) MERITS OF THE LAWSUIT**

The construction area where the developer, Tirana Municipality, has undertaken the construction work of the playground park is part of National Importance Zone, Tirana Green Crown and as such it is subject to a number of specific legal provisions and procedures. Construction works procured and implemented by the Tirana Municipality, as it will be explained below, are illegal, based on an administrative act that is absolutely invalid and in violation of many Albanian laws in force.

As covered in detail in paragraph (i) above, Tirana Municipality initiated procurement procedures for carrying out construction works of the project of the playground park since 14 December 2015, approximately two (2) months prior to the adoption of conditioned construction permit by means of the Decision of the National Territory Council no. 1. According to the work table, work began on 10 February 2016, that is 2 (two) days prior to the issuance of the building permit as approved upon the Decision of the National Territory Council no. 1 whereas currently the construction works of the playground park project continue to be carried out without meeting the conditions laid down in Decision of the National Territory Council no. 1 and based on an absolutely invalid building permit as it will be explained below.

### **1. The illegality of the construction works due to violations of legislation on the development of the territory**

The basic law on territorial development is Law no. 107/2014 "On the planning and development of the territory", which entered into force on 1 October 2014 ("Law 107/2014"). All development and construction in the Republic of Albania are already governed by the principles and procedures laid down in the law 107/2014 and its bylaws.

Article 1 of Law 107/2014 defines the purpose, for which the law was adopted by the Albanian legislator and, which consists in the main points as highlighted below:

- i. Article 1 (a) provides that the law is aimed at sustainable territorial development through the rational use of natural resources.*
- ii. Article 1 (d) provides that the purpose of the law is that the right of use and development of property be exercised in accordance with planning documents and environmental legislation in force.*
- iii. Article 1 (e) provides that the law also aims to ensure that national and local planning authorities coordinate their planning activities to promote the harmonized and integrated planning of the territory.*

The main principles that guide the development of the territory are defined in Article 4 of Law 107/2014, of which the following ones are highlighted:

- iv. Article 4 (b) states that development should be guided by planning, which is mandatory for all planning authorities.*
- v. Article 4 (dh) stipulates that the planning process should be accompanied by transparency and development control.*
- vi. Article 4 (gj) states that territorial planning and development must be harmonized with the approach of the European Union that complies with the respecting of environmental requirements, preservation of biodiversity and protected areas.*
- vii. Article 4 (h) states that development should be based on comprehensive planning and designing.*
- viii. Article 4 (j) stipulates that the development of the territory must be carried out in respect of the hierarchy of plans, i.e., planning documents as defined by law 107/2014.*

- ix. *Article 4 (ll) establishes the principle of guaranteeing public access and participation when drafting the planning documents and development control.*
- x. *Article 4 (m) provides for integrated planning system, which implies coordination of the activities of public authorities involved in territorial development processes as mentioned in paragraph (iii) above.*

The purpose and principles of law 107/2014 are translated into a set of detailed rules of procedures to be followed during the development processes of the territory, in order to respect the spirit of the law, which is precisely the development of the territory based on preliminary planning and sustainable development through the territory and environmental protection. For this reason, Article 15 of Law 107/2014 has defined levels of hierarchy of territorial planning and planning documents for each level of central or local government.

Urban planning at the central level, as is the case of construction works of the playground park, is carried out through the planning documents as provided below:

- xi. National General Plan for the entire territory of the Republic of Albania;*
- xii. National sectoral plans for all or part of the territory;*
- xiii. Detailed plans for areas of national importance.*

Being part of Tirana Green Crown, the area where construction works are being carried to build the playground park, is defined as a National Importance Area by the Decision of the National Territory Council no. 4. Defining areas as areas of national importance is done in accordance with the criteria, detailed rules and procedures provided for by law 107/2014 and the Decision of the Council of Ministers no. 671, dated 29 July 2015 "On approval of the regulation of territorial planning" ("Decision of the Council of Ministers on Planning").

Article 33 of the Decision of the Council of Ministers on Planning determines that the areas of national importance must have a number of characteristics or special values, which justify the national interest for the area, such as special cultural, historical, economic, social or environmental features ... Identification of the specific characteristic that makes an area be declared of national importance is contained in the document by means of which the designation of the area of national importance is proposed.

Under Article 34, Paragraphs (1), (2) and (3) of Decision of the Council of Ministers on Planning there are three ways to define an area as an area of national importance and respectively:

- xii. During the process of drafting the National General Plan.*
- xiii. During the drafting process of national sectoral plans.*
- xiv. Through a special process provided for in Article 16 (3) of Law 107/2014.*

In this specific case, the determination as an area of national importance of the territory where construction works are being carried out to build the playground is accomplished through a special process provided for in Article 16 (3) of Law 107/2014 and Article 34 (4) of the Decision of the Council of Ministers on Planning. Under this procedure, the Territorial Planning National Agency ("TPNA") proposes to the NTC declaration of an area as an area of national importance. In fact, as explicitly mentioned in Article 1 of Decision of the National Territory Council no. 4, Tirana Green Crown is defined as an area of national importance under the Territorial Planning National Agency Decision with Protocol no. 1159, dated 18 August 2014. Consequently, the reason for the need of

declaring Tirana Green Crown as an area of national importance, in the territory of which the playground park project is included, should be defined in the Territorial Planning National Agency Decision with Protocol no. 1159, dated 18 August 2014. In breach of a legal obligation, this Territorial Planning National Agency decision is not published online, therefore its content is not yet known. However, according to the content of Decision of the Council of Ministers no. 956 and the Decision of the National Territory Council no. 4, national interest of the area identified as Tirana Green Crown lies in its special environmental characteristics and the goal is precisely the protection of the environment within this area. Consequently, buildings within this area must comply with specific rules and procedures established by law 107/2014 and the Decision of the Council of Ministers on Planning. For the issuance of a valid building permit and the commencement of execution of works within an area of national importance, a series of procedures, which are well-defined in Law 107/2014 and in the Decision of the Council of Ministers on Planning, should be carried out.

Under Article 18 (1) of Law 107/2014, detailed plan of an area of national importance ("Detailed Plan of the Area of National Importance") is drafted in order to protect, preserve and sustainably develop the areas of national importance. Article 18 (6) of Law 107/2014 expressly lays down that a permit for carrying out development works in the area of national importance is granted under the Detailed Plan of the Area of National Importance. Article 37 of the Decision of the Council of Ministers on Planning stipulates that the Detailed Plan of the Area of National Importance Plan should contain a range of analytical key elements of development, among which: area development strategy - Article 37 (2) (b); development impact assessment study and environmental impact assessment (EIA) - Article 37 (2) (e); Regulation of the Detailed Plan of the Area of National Importance, which contains elements such as environmental conservation rules, norms and standards for developments that have an impact on the environment, health, landscaping and cultural heritage, etc. - Article 37 (4) (ç).

Article 38 (3) (dh) of the Decision of the Council of Ministers on Planning stipulates that when drafting the Detailed Plan of the Area of National Importance the coordination process with other authorities involved and the process of consultation and public meetings should be carried out. Coordination is regulated by Article 23 of Law 107/2014, according to which a process of dialogue, cooperation and horizontal and vertical coordination with all the planning authorities and stakeholders should be ensured when drafting the Detailed Plan of the Area of National Importance. Consultation and public meetings are regulated by article 24 of Law 107/2014, according to which during the process of drafting the Detailed Plan of the Area of National Importance one or more public hearings and consultation with stakeholders, which should have access to documentation of the Detailed Plan of the Area of National Importance should be organized, at least, thirty (30) days before the meeting.

Approval of the Detailed Plan of the Area of National Importance is regulated by Article 25 of Law 107/2014 and Article 39 of D Decision of the Council of Ministers on Planning stipulates. One of the preliminary steps of the Detailed Plan of the Area of National Importance approval under Article 39 (3) (c) of the Decision of the Council of Ministers on Planning is the adoption of the Strategic Environmental Assessment Study ("SEA") under the specific legislation in force. In the case of the project of building the playground park there a document approved by Decision of the National Territory Council no. 6/4, dated 13 November 2015 "*On preparing the Master Plan of the Lake Park and 5 Pilot Projects for 5 sites, in the Framework of the Rehabilitation Lake Park -Pilot Project 4 / Playground for Children*" ("**Master Plan**"). In violation of the legal obligation with regard to online

publication of the NTC decisions in the NTC Registry, this decision was not published. Consequently, its content is unknown till today. However, the fact that the Master Plan has not passed the legally binding procedures of coordination, announcement and public consultation confirms that the latter fails to have the legal value of a Detailed Plan of an Area of National Importance for Tirana Green Crown.

After respecting all planning steps above, a building permit may be issued for the area of national importance. The issuance of the building permit is performed under Law 107/2014 and under the Council of Ministers Decision no. 408, dated 13 May 2015 "*On the approval of rules of procedure for the development of the territory*" ("Decision of the Council of Ministers no. 408"). Under Article 14 (1) of Decision of the Council of Ministers no. 408 the building permit is issued in accordance with the planning documents, and, under Article 14 (3) of Decision of the Council of Ministers no. 408, the building permits are issued only after getting the appropriate permits and authorizations for the construction in question pursuant to the specific legislation in force.

As a result of the procedure explained above, in this case, the following steps should be respected in order to issue a valid building permit for carrying out construction works in an area of national importance, such as the area where the playground is being built:

1. *Preparation of Detailed Plan of the Area of National Importance;*
2. *Drafting of the Development Strategy of the Area of National Importance as part of the Detailed Plan of an Area of National Importance;*
3. *Impact Assessment of Development as part of the Detailed Plan of an Area of National Importance;*
4. *Environmental Impact Assessment as part of the Detailed Plan of an Area of National Importance;*
5. *Coordination with all other institutions;*
6. *Consultation with interested public;*
7. *Strategic Environmental Evaluation of the Plan of the Area of National Importance;*
8. *Issuance of building permits based on the Detailed Plan of an Area of National Importance forecasts.*

The conditional building permit and final building permit for the works of the playground park have not been preceded by any of the above steps. First, all the planning stage is missing, because the Detailed Plan of an Area of National Importance for Tirana Green Crown has not been drafted and published for public consultation, where the strategy of the development of the area, impact assessments of development and environment impact assessment should have been established. The Memo of the National Environment Agency makes it clear that the process of coordination with other institutions hasn't been carried out, particularly with those protecting the environment, before the start of construction works of the playground park. No consultations with interested public were carried out in regard to the Detailed Plan of an Area of National Importance for Tirana Green Crown for the simple fact that the latter has never been drafted. The Strategic Environmental Assessment of the Detailed Plan of an Area of National Importance for Tirana Green Crown has not been drafted. Starting of construction works before carrying out the above procedures leads consequently to the violation of a number of legal provisions and namely: violation of Articles 18 (1), 18 (6), 23, 24 and 25 of Law 107/2014; violation of Articles 34 (4), 37, 38, 39 and 41 (3) of the Decision of the Council of Ministers on Planning; violation of Articles 14 (1) and 14 (3) of Decision of the Council of Ministers no. 408.

Consequently, under the provisions of Article 39 (4) of Law 107/2014, the building permit for the playground, as adopted in violation of the law, **is absolutely invalid. So the construction works**

**of the playground park are under the conditions of an illegal administrative action under Article 17 (d) of Law 49/2012.**

## **2. The illegality of the construction works due to violation of the legislation on the environment protection.**

As explained in detail above, the development in the areas of national importance must be performed in accordance with a set of rules and procedures, among which an important place is taken up by the environmental protection norms. Law 107/2014 itself and the Decision of the Council of Ministers on Planning have determined the need to draft the EIA and SEA for the development of the territory of the areas of national importance. On the other hand, environmental legislation in force provides for a range of special environmental obligations for specific projects such as the construction of the playground park, which is the subject matter of this adjudication. All obligations of environmental legislation have a substantial impact on the legality of construction works within the territory of the Republic of Albania.

Under Article 39 (2) (c) of the Decision of the Council of Ministers on Planning, Strategic Environmental Assessment ("SEA") of the Detailed Plan of the Area of National Importance should be drafted in addition to other procedures. This obligation is also enshrined in Article 11 of Annex 1 of the Decision of the Council of Ministers no. 507, dated 10 June 2015 "*On the approval of the detailed list of plans and programs with negative consequences on the environment, which will be subject to strategic environmental assessment process*" ("Decision of the Council of Ministers no. 507"). In fact Article 11 of Annex 1 of the Decision of the Council of Ministers no. 507 provides that the following will be subject to SEA process "*strategies, plans, programs and other planning documents that are the subject of legislation on planning and development of the territory*". Consequently, the Detailed Plan of the Area of National Importance for Tirana Green Crown, after being drafted, should be subject to SEA under the procedures of the Law no. 91/2013 "On strategic environmental assessment" ("SEA Law"). Under Article 7 of the Law on SEA, SEA process must necessarily pass several stages including consultation with stakeholders, drafting of the interim report and its consultation with stakeholders and the public. So, as it seems clear, the lack of drafting the Detailed Plan of the Area of National Importance for Tirana Green Crown not only causes absolute invalidity of the Building Permit issued for the playground and consequently the illegality of the works of Tirana Municipality, but is also in violation of specific legislation on Environmental Impact Assessment and the rights of the public to participate in environmental decision-making. **For this reason, the construction works for building the playground park are under the conditions of illegal administrative action according to Article 17 (d) of Law 49/2012.**

Under Article 37 (2) (e) of the Decision of the Council of Ministers on Planning, the Detailed Plan of the Area of National Importance should include study of the Environmental Impact Assessment of the development projects envisaged in these areas. Identification of the type of EIA, either preliminary or in-depth one, for the concrete Detailed Plan of the Area of National Importance for Tirana Green Crown should have been conducted in the frame of the coordination process set out in Article 23 of Law 107/2014. This coordination necessarily requires the active participation of the institutions responsible for environmental protection such as the National Environment Agency ("NEA") and the Ministry of Environment.

Even in the absence of the provision of article 37 (2) (e) of the Decision of the Council of Ministers on Planning as mentioned above, the project of the construction of the playground park would have

certainly been subject of the legislation that regulates the process of impact assessment on environment development and construction projects in the Republic of Albania: Law no. 10440, dated 07 July 2011 "*On environmental impact assessment*" ("EIA Law"), the Council of Ministers Decision no. 912, dated 11 November 2015 "*On the approval of the national methodology for the process of environmental impact assessment*" ("Decision of the Council of Ministers no. 912") and the Decision of the Council of Ministers no. 247, dated 30 April 2014 "*On establishing the rules, requirements and procedures for informing and involving the public in environmental decision-making*" ("Decision of the Council of Ministers no. 247").

In fact, Article 8 (a) of the Law on EIA sets forth that the projects included in Annex II of the law should be first subject to preliminary environmental impact assessment. Article 12 of Annex II of the Law on EIA lists projects built in the frame of tourism and leisure and respectively paragraph (d) of this Article provides for the thematic parks as the subject of the preliminary EIA.

In accordance with the technical project of the playground park (attached as Annex no. 12) as published on the website of the Procurement Agency, the playground park that is being built by the Municipality in Tirana Green Crown consists in building a train for children, 4 ping-pong fields, wooden toys, concrete wall for climbing activity, basketball area, concrete platform for skateboard etc. Therefore it is impossible not to classify the playground in question under the category of thematic parks constructed for leisure purposes. For this reason, Tirana Municipality, as the developers of the project of the playground park, and under Article 10 of the Law on EIA, is obliged to submit the preliminary EIA report on the project of the playground park to the Ministry of Environment, which then forwards it to the NEA.

Decision of the Council of Ministers no. 247 sets out the procedures to be followed by NEA during the preliminary EIA in relation to information and public participation. Namely Article 2 of Decision of the Council of Ministers no. 247 stipulates that NEA publishes within 5 (five) days of the application for the preliminary EIA on its website the complete information on the project which will remain published for 20 (twenty) days in a row. According to Article 3 of the Decision of the Council of Ministers no. 247 the NEA explains in its publication the procedure to be applied, the time of the decision, the manner and the deadline of 20 (twenty) days for the delivery of the public feedback, the manner and the deadline for challenging the decision. At the conclusion of the preliminary procedure of EIA, NEA also publishes its full decision on the website where the public and interested parties can have access to a full copy.

It is worth mentioning that the process of Impact Assessment on Environment, as approved by the Albanian government in the framework of approximation with EU legislation, has established specific procedures for environmental protection precisely from hasty, ill managed and badly used projects, which are harmful to the environment, such as the project of construction of concrete playground park within Tirana Green Crown proposed by Tirana Municipality in the capacity of the developer. In fact, the Decision of the Council of Ministers no. 912 provides for in Article 2.2 that the purpose and scope of EIA is to provide information to decision makers and to the public on the environmental consequences of the proposed new developments, to promote development that respects the environment through the identification of appropriate strengthening and mitigation measures, to identify potential adverse environmental impacts of new projects. In addition, Article 3 of the Decision of the Council of Ministers no. 912 stipulates that the environmental impact assessment implements the principle of prevention in the early stage of project planning in order to avoid or minimize the negative effects on the environment and that the EIA is carried out by the

developer as part of the preparations for the planning of a development project, and before applying for the relevant development permits. By means of Memo with Protocol no. 570/1, dated 23 March 2016 as issued by the National Environment Agency ("NEA Memo"), the latter has expressly confirmed that there had been no application to this institution for preliminary EIA about the playground park project.

Tirana Municipality, not only has failed to draft the preliminary report of the EIA as required by the EIA law for thematic parks and has additionally failed to apply for the follow up of the preliminary EIA, but, above all, it has started construction works for the playground park as of the 10th of February 2016 without any valid administrative act, which approved the execution of the construction works in question. Through this activity, Tirana Municipality had not only violated legislation related to territorial development and to environment impact assessment by carrying out an illegal administrative activity, but it has hindered the exercise of the rights of the interested public to participate in environmental decision-making, a right that is granted by the legal provisions in force of the Decision of the Council of Ministers no. 912.

Moreover, the construction works, which had started in full unlawfulness and completely bypassing environmental protection institutions, are being carried out within the area identified as Tirana Green Crown, which is so clearly an area of high environmental sensitivity. As for a reminder, the Decision of the Council of Ministers no. 956 provides for in Article 1 that "*defining Tirana Green Crown in order to... ensure nature conservation, protection and improvement of environmental conditions and promoting sustainable planning ...*" and it assigns in Article 3 (a) the Ministry of Environment and the Ministry of Urban Development and Tourism to take into consideration the prevention and/or reduction of the risk to the environment during the drafting and adoption of the planning of the territory and development plans under their jurisdiction for this area. Similarly, Decision of the National Territory Council no. 4, which has declared the area of Tirana Green Crown as an area of national importance, stipulates in Article 3 that the development plans for this area will be aimed at increasing the level of conservation of Tirana Green Crown. The project of the playground park made of concrete, the works of which are being carried out by Tirana Municipality in the capacity of the developer, is characterized, in addition to unlawfulness, by the violation of all principles of protection of the area with environmental sensibility, as defined by the bylaws mentioned above. **For this reason, the construction works of the playground park are under the circumstances of an illegal administrative action under Article 17 (d) of Law 49/2012.**

Since, as mentioned above, the technical project of the playground park envisages building of a train for children, the installation of which is being carried out in the Tirana lake park, which is an area of calm where vehicular noisy traffic is prohibited, we are under the conditions of the execution of a legislation that governs the environmental noises and respectively Law no. 9774, dated 12 July 2007 "On the assessment and management of environmental noise" ("Law no. 9774"), joint Instruction of the Ministry of Environment and Ministry of Health no. 8 dated 27 November 2007 "*On the noise limit ranges in specific environments*" ("Instruction No. 8") and Law no. 10448, dated 14 July 2011 "*On environmental permits*" ("Law on Environmental Permits").

Law no. 9774 defines ways of avoiding noises in the environment and preventive measures for noise reduction and elimination of their harmful effects. Pursuant to the law, noise limits acceptable to the environment were approved through Instruction no. 8, Article 2 of which stipulates that public parks are also among the facilities where the instruction will be executed. Annex 1 of Instruction no. 8 actually contains noise levels for public parks and it stipulates that "*Calms exterior areas must be*



*protected and the ratio of the incoming noise/additional against the natural phony noise should be kept as low as possible".* In addition to the specific legal framework for noise, there is the Law on Environmental Permits, which sets out in Annex 1, paragraph 12.5, that activities, which emit noise to the environment, must be provided with environmental permit of Type C. Moreover, under Article 12 (1) of Law 9774, the environmental permit, with which the individuals and legal persons who generate noise in the environment through the exercise of their activity are provided, sets the conditions that the latter must comply with to avoid negative consequences of noise to the environment.

Based on the National Environment Agency Memo with protocol no. 570/1, dated 23 March 2016, the latter has expressly confirmed that there had been no application to this institution for obtaining an Environmental Permit regarding the project of the playground park. Therefore, building of the toy train, this is an activity that certainly causes noise to the environment, has not been preceded by the application for the Environmental Permit of Type C under the obligations of the legislation in force. **For this reason, the construction works of the playground park are under the circumstances of an illegal administrative action under Article 17 (d) of Law 49/2012.**

### **3. The illegality of the procurement procedure of the construction works for the playground park**

Had the aforementioned violations not been enough, the works' procurement procedure for the construction of the playground park is characterized by unlawfulness. As mentioned above, Tirana Municipality initiated procurement procedures for carrying out construction works of the project of the playground park on 14 December 2015, approximately two (2) months before the approval of the conditional building permit by means of Decision of the National Territory Council no. 1. Under Article 13 (5) of Decision of the Council of Ministers no. 408 "On the structures that are procured with public funds, the permit shall be obtained by the body that conducts the procurement before it subcontracts the building of the structure". Initiation of the procurement procedures and contract approval Tirana Municipality in the capacity of the developer before the issuance of the building permits entails the illegality of the entire public procurement procedure.