



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 15 July 2019.
Ref. No.: RK 1394/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KIo2/18

Applicant

**The Government of the Republic of Kosovo
[Ministry of Environment and Spatial Planning]**

**Constitutional review of Decision Rev. No. 232/2017 of the Supreme
Court of Kosovo of 15 November 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by the Government of the Republic of Kosovo, namely the Ministry of Environment and Spatial Planning, in the capacity of the Expropriating Authority, which is represented by the State Advocacy Office of the Republic of Kosovo, through the State Attorney, Mr. Shefqet Hasimi (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. No. 232/2017] of 15 November 2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), by which the request for revision was rejected as ungrounded.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which, according to the Applicant's allegations, violated the Constitution of the Republic of Kosovo (hereinafter: the Constitution), without accurately specifying any rights or freedoms that may have been violated.
4. The Applicant has also requested that its identity be not disclosed.

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

7. On 5 January 2018, the Applicant submitted the Referral to the Court.
8. On 9 January 2018, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
9. On 24 January 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Court also sent a copy of the Referral to the interested party F.I.TH., inviting the latter to submit its comments to the Court within a period of 7 (seven) days of receipt of the letter of the Court. Within the time limit, the Court did not receive any comments from F.I.TH.
10. On 16 June 2018, the mandate of judges: Almiro Rodrigues and Snezhana Botusharova was terminated. On 26 June 2018, the mandate of judges Altay Suroy and Ivan Čukalović was terminated.

11. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
12. On 22 August 2018, the President of the Court rendered Decision No. GJR. KIo2/18 on the replacement of Judge Rapporteur Almiro Rodrigues, and Judge Bajram Ljatifi was appointed as Judge Rapporteur instead.
13. On 2 October 2018, the President of the Court rendered Decision No. K.KSH. KIo2/18 for the replacement of Judges Altay Suroy and Snezhana Botusharova, where Judges: Arta Rama-Hajrizi (Presiding) and Gresa Caka-Nimani were appointed instead.
14. On 20 June 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 3 August 2011, the Applicant, in the capacity of the Expropriating Authority, for the purpose of extending a highway road, rendered the Final Decision [No. 09/29], by which it approved the partial expropriation of two cadastral plots of F.I.TH. As a compensation for expropriation, the Applicant decided that the interested party F.I.TH. would be paid 1,619.00 euro in total for both his cadastral plots.
16. The interested party F.I.TH. received the real compensation of € 1.619.00 from the Applicant. However, as it was dissatisfied with the amount of compensation granted by the Applicant and the fact that it was not compensated for the demolition of a residential-business facility that had already been on the expropriated plots, F.I.TH. submitted a proposal to the Basic Court in Prishtina-Branch in Gllogoc (hereinafter: the Basic Court), seeking higher real compensation for its cadastral plots and compensation for the demolition of the residential-business facility in its immovable property.
17. On 1 September 2014, the Basic Court, by the Decision [CN. No. 36/13], approved in entirety the proposal of the interested party, F.I.TH. On that occasion, the Basic Court modified the Final Decision [No. 09/29] of 3 August 2011 by: (i) setting the amount of 2,944.00 euro as a real compensation instead of the amount of 1,619.00 euro that was originally granted by the Applicant; and (ii) setting a real compensation of 17,690.00 euro for the residential-business facility, respectively total amount of 20,634.00 euro together with the respective interest rate of 7% for the residential-business facility of the interested party, F.I.TH., located in the same cadastral plots that were expropriated and subsequently demolished by the Applicant for the purpose of the construction of the highway. From the total adjudicated amounts, the Basic Court stated that only the amount of 1,619.00 euro, already paid to the interested party, F.I.TH. will be deducted, so that, in total, the compensation awarded by the Basic Court to be accepted by the interested party F.I.TH. was 19,015.00 euro.

18. Against the Decision of the Basic Court, the Applicant filed an appeal with the Court of Appeals on the grounds of essential violation of the provisions of the Law on Expropriation of Immovable Property, erroneous and incomplete determination of factual situation and erroneous application of substantive law, requesting that the Decision of the first instance court be modified in order to reject the request of the interested party, F.I.TH., or to remand the case to the Basic Court for reconsideration and retrial.
19. On 3 September 2015, the Court of Appeals, by the Decision [CA. No. 3642/14], approved the Applicant's appeal as "grounded" and remanded the case to the Basic Court for further proceedings.
20. On 10 March 2017, the Basic Court, considering the same case but now in reconsideration, by the Decision [C. No. 38/15] again approved the proposal of the interested party, F.I.TH., so that it ordered that the Applicant to compensate it in the amount of 2,944.00 euro for the expropriation of two cadastral plots and 17,690.00 euro for the residential-business facility, respectively a total amount of 20,634.00 euro. As the first time, the Basic Court again decided that the amount of 1,619.00 euro, which has already been paid to the interested party, F.I.TH., would be deducted from the total amount of compensation that it had to receive from the Applicant.
21. Against the abovementioned decision, the Applicant filed an appeal with the Court of Appeals on the grounds of essential violation of the provisions of the out contentious procedure and erroneous application of the substantive law.
22. On 24 July 2017, the Court of Appeals, by the Decision [Ac. No. 2001/2017], rejected as ungrounded the Applicant's appeal and upheld the Decision [C. No. 38/15] of 10 March 2017 of the Basic Court. The Court of Appeals considered that the appealing allegations of the Applicant, regarding the amount of compensation for the immovable property of the interested party, F.I.TH., were ungrounded. According to the Court of Appeals, the opinions of the independent and professional experts reasoned in a comprehensive way and accurately explained on what parameters and conditions they based their assessment regarding the proposed amounts of compensation.
23. Against the abovementioned decision of the Court of Appeals, the Applicant submitted a request for revision to the Supreme Court. Before this court, the Applicant alleged essential violation of the provisions of the out contentious procedure and erroneous application of the substantive law - proposing that the two judicial decisions of lower instance be modified and the proposal for re-evaluation of the interested party F.I.TH. be rejected or the same decisions be quashed and be remanded to the Basic Court for retrial.
24. On 15 November 2017, the Supreme Court, by Decision [Rev. No. 232/2017], rejected as ungrounded the revision submitted by the Applicant and confirmed the legality of the decisions rendered by the Basic Court and the Court of Appeals.

25. The Supreme Court reasoned its Judgment as follows:

“The Supreme Court of Kosovo [...] found that the first instance court and the second instance court having correctly and completely determined the factual situation applied the provisions of the contested procedure and the substantive law when they found that the proposal of the proposer [the interested party F.I.TH.] for real compensation for the expropriated immovable property was grounded, according to the expert’s assessment. The experts in question have given their opinions in a professional manner, evaluating in a comprehensive manner and explaining on what parameters and conditions they were based when they have given their professional assessments, setting the market price of the expropriated immovable property based on data on the circulating value of this area, taking into account the most relevant criteria that have influenced the constitutional price of this area at the moment of evaluation.

In their opinion, the experts provided sufficient reasons for all relevant facts which this court also approves in entirety. Therefore, the allegations of revision regarding erroneous application of substantive law are ungrounded.

From the above and based on the provision of Article 222 in conjunction with Article 230 of the LCP [Law on Contested Procedure], it was decided as in the enacting clause of this decision.”

Applicant’s allegations

26. The Applicant alleges that the Supreme Court by the challenged decision violated its rights and freedoms guaranteed by the Constitution, without specifying any specific provision of the Constitution, which could have been violated.
27. The Applicant stated that despite the fact that it used all legal proceedings - the regular courts rendered their decisions in violation of the substantive law, which, according to it, *“the state of Kosovo has been damaged”* by *“partial”* decisions which have resulted in unfounded enrichment of the interested party F.I.TH.
28. In this regard, the Applicant alleges that the regular courts did not take into account laws on construction and that the state of Kosovo was damaged by the decisions taken in constitutional violation.
29. The Applicant, by reasoning its referral, proposes to the Constitutional Court the following: *“based on the evidence, sketches from the field, photos showing that the facility was out of use, is not far from the expropriation line but the owners have prevented the continuation of the works until the Ministry of Infrastructure was forced to construct a wall 105 m long and 1.5 wide, so it allowed the continuation of the works”*. According to the Applicant, these are convincing evidence that the facility was not demolished by the Ministry of Infrastructure, but the claimant [interested party, F.I.TH.] and the contractor did it willingly.

30. Finally, the Applicant addresses the Court with the following request:

“We propose to the Constitutional Court to approve the request of the counter-proposer [the Applicant] pertaining to the value of the object in the amount of 17,690 euro which is considered unfounded enrichment. I presented the undisputable evidence. I seek justice.”

Assessment of the admissibility of the Referral

31. The Court first examines whether the Applicant has met the admissibility requirements established by the Constitution and as further specified by the Law and the Rules of Procedure.
32. In this respect, the Court refers to Article 21 [General Principles] and paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide:

Article 21 of the Constitution
[General Principles]

4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Article 113 of the Constitution
[Jurisdiction and Authorized Parties]

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.

33. The Court also refers to Article 47 [Individual Requests] of the Law, which stipulates:

Article 47 of the Law
[Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority”.

“2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

34. Initially, as regards the fulfillment of these criteria, the Court notes that the Applicant is an authorized party which, in the capacity of a legal person as a

party to a civil dispute at horizontal level, challenges an act of a public authority, namely the Decision [Rev. No. 232/2017] of 15 November 2017 of the Supreme Court after exhausting all legal remedies provided by law. Consequently, the Court finds that the Applicant has fulfilled the criteria set forth in Articles 21.4, 113.1, 113.7 of the Constitution and Article 47 of the Law.

35. However, the Court should also refer to other relevant admissibility criteria set out in the Law and the Rules of Procedure, namely, Article 48 [Accuracy of the Referral] of the Law and Rule 39 (1) (d) of the Rules of Procedure, which stipulate:

Article 48 of the Law
[Accuracy of the Referral]

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”

Rule 39
[Admissibility Criteria]

“(1) The Court may consider a referral as admissible if:

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.”

36. As regards the fulfillment of these criteria, the Court first notes that Article 48 of the Law is further reflected and further specified by Rule 39 (1) (d) of the Rules of Procedure and as such - these two regulations - must be read together.
37. In this regard, the Court notes that Article 48 of the Law contains a total of two requirements. The first consists of (i) the obligation of the Applicants and their obligation to accurately clarify what rights and freedoms were allegedly violated by the public authority - the decision of which they challenge; and the second consists in (ii) the obligation of the Applicants and their obligation to specify the concrete act of the public authority, which they wish to challenge before the Constitutional Court. Both of these criteria of Article 48 of the Law, and in particular the first criterion of that article, are also reflected in Rule 39 (1) (d) of the Rules of Procedure, where it is required that a referral submitted to the Court should accurately clarify and adequately present facts and allegations of violation of constitutional rights or provisions.
38. As to the admissibility criteria set forth by the Law and further specified in the Rules of Procedure, the Court notes that, despite the fact that the Applicant has clearly specified that it challenges the Decision [Rev. No. 232/2017] of 15 November 2017 of the Supreme Court, it did not fulfill its legal obligation to *“accurately clarify what rights and freedoms have allegedly been violated”* by the public authority, namely the Supreme Court in the present case. The

Applicant has failed to accurately and adequately submit allegations of violation of its rights and freedoms guaranteed by the Constitution.

39. In this regard, the Court recalls that the Applicant did not state any article of the Constitution nor it referred to any rights and freedoms guaranteed by the Constitution that could potentially be violated. Neither the Applicant's referral has made it possible to understand accurately from its substance what complaint at constitutional level the Applicant wanted to raise.
40. In the allegations submitted to the Court, the Applicant states that the state of Kosovo has suffered damages and that this Court should look at material evidence such as photos, sketches of the field, construction issues etc. and to establish that the interested party F.I.TH. has benefited from unfounded enrichment. However, the Applicant does not specify or explain in any way how such actions have resulted in a violation of its rights guaranteed by the Constitution or what is in fact the factual connection of these facts with the unspecified and confusing allegations it raised in its referral.
41. Therefore, in the light of the foregoing circumstances, the Court finds that the Applicant's Referral does not clearly and adequately specify what rights and freedoms guaranteed by the Constitution have allegedly been violated, and as such, the Referral should be rejected for failure to meet the admissibility requirements provided for in Article 48 of the Law in conjunction with Rule 39 (1) (d) of the Rules of Procedure.
42. Accordingly, the Court concludes that the Applicant's Referral is to be declared inadmissible.

Request to not disclose identity

43. Through the form submitted to the Court, the Applicant requested the Court not to disclose its identity. Such a request was made only by marking the part of the form when it is required to put the marker (X) whether the applicant would like the identity to be disclosed or not. In that part, the Court notes that the Applicant marked with X the part of the form stating that the identity "not to be disclosed".
44. However, the Court notes that in the part seeking to clarify the reasons for the non-disclosure of the identity, the Applicant did not present any reason.
45. In this regard, the Court refers to Rule 32 (6) of the Rules of Procedure, which provides:

"(6) Parties to a referral who do not wish their identity to be disclosed to the public shall so indicate and shall state the reasons justifying such a departure from the rule of public access to information in the proceedings before the Court. The Court by majority vote authorizes non-disclosure of identity or grants it without a request from a party. When non-disclosure of identity is granted by the Court, the party should be identified only through initials or abbreviations or a single letter."

46. Based on the complete lack of reasoning by the Applicant as to why its identity should not be disclosed, the Court finds that such request should be rejected as ungrounded (see another case of the Constitutional Court where a request for non-disclosure of identity was filed, KI74/17, Applicant *Lorenc Kolgjera*, Resolution on Inadmissibility of 5 December 2017).
47. In addition, in the present case, the Applicant is the Government of the Republic of Kosovo, namely the Ministry of Environment and Spatial Planning, represented by an attorney of the State Advocacy of the Republic of Kosovo, and the Court sees no legitimate reason why to keep secret the identity of the Applicant - which is moreover a public authority in the Republic of Kosovo.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113, paragraphs 1 and 7 of the Constitution, Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, on 20 June 2019, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for non-disclosure of identity;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bajram Ljatifi

Kopje e vërtetë
Overena kopija
Certified Copy

Arta Rama-Hajrizi

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