



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

Pristina, 29 November 2013
Ref.no.:RK507/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KO 08/13

Applicant

Municipality of Klina

**Constitutional Review of the Decision of the Administrative Panel of the
Supreme Court of Kosovo, A.no.811/2006, dated 14 March 2007, and
fifteen (15) other decisions
and
Request for imposing Interim Measure**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
1. Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is the Municipality of Klina, represented by Mr. A. Sh.

Challenged decisions

2. The Applicant challenges the following sixteen decisions of the Administrative Chamber of the Supreme Court of Kosovo in respect of sixteen different third parties:
 - a. A.no.811/2006, dated 14 March 2007;
 - b. A.no.752/2006, dated 14 March 2007;
 - c. A.no.755/2006, dated 14 March 2007;
 - d. A.no.635/2006, dated 14 March 2007;
 - e. A.no.753/2006, dated 14 March 2007;
 - f. A.no.754/2006, dated 14 March 2007;
 - g. A.no.751/2006, dated 14 March 2007;
 - h. A.no.750/2006, dated 28 January 2009;
 - i. A.no.749/2006, dated 28 January 2009;
 - j. A.no.638/2006, dated 28 January 2009;
 - k. A.no.747/2006, dated 28 January 2009;
 - l. A.no.637/2006, dated 28 January 2009;
 - m. A.no.636/2006, dated 28 January 2009;
 - n. A.no.746/2006, dated 28 January 2009;
 - o. A.no.748/2006, dated 28 January 2009; and
 - p. A.no.579/2006, dated 28 January 2009.

Subject matter

3. The subject matter of this Referral is the constitutional review of the aforementioned challenged decisions. The Applicant alleges that the said decisions violated its rights guaranteed by the Constitution, namely Article 12 [Local Government] in conjunction with Articles 123 and 124 [Local Government and Territorial Organization], Article 46 [Protection of Property] and Article 121 [Property]. In addition, the Applicant alleges a violation of its right to the free enjoyment of property under Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter: the ECHR).
4. Furthermore, the Applicant requests the Constitutional Court to impose an Interim Measure under Article 27 of the Law on the Constitutional Court, pending the Court's decision on the Referral, in order to prevent the irreparable damage to municipal public property that would result from execution of the decisions of the MESP and the judgments of the Supreme Court.

Legal basis

5. Article 113.4 of the Constitution, Articles 27, 40 and 41 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, entered into force on 15 January 2009 (hereinafter: the Law), and Rule 55 and Rule 56 (2) and (3) of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

6. On 24 December 2009, the Applicant sent a letter to the Court, intending this to constitute the submission of a Referral.
7. On 30 December 2009, the Court requested the Applicant to submit a completed official referral form and to designate an authorized representative.
8. On 9 January 2013, the Court informed the Applicant that, due to the absence of any response to the Court's request of 30 December 2009, the Referral had not been registered with the Court, because the Court considered the Referral incomplete.
9. On 23 January 2013, the Applicant submitted a completed referral form, together with a letter of authorization of a representative and the relevant court decisions. The Applicant alleged that the letter of the Court dated 30 December 2009 was not received and that, therefore, the completed referral form was not submitted at that time.
10. On 23 January 2013, the Referral was registered in the Court.
11. On 30 January 2013, the Applicant submitted additional argumentation in relation to the Referral, and clarified that the Referral was based on Article 113.4 of the Constitution, and not on Article 113.7.
12. On 30 January 2013, the President of the Court no. GJR.08/13 appointed Judge Robert Carolan as Judge Rapporteur and by Decision no. KSH.08/13 the President appointed the Review Panel composed of members: Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
13. On 26 March 2013, the Referral was communicated to the Supreme Court.
14. On 14 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

15. On 18 April 2003, the Municipal Assembly of Klina (01 Nr. 350-107/03) adopted a revised detailed urban plan for the Municipality of Klina.
16. On 14 March 2005, on the basis of the revised urban plan, the Board of Directors of the Applicant issued a Decision (1/3 NR.353-247/2005) revoking all existing permits for the construction of temporary premises. The Board of Directors justified this Decision on the basis that all existing temporary constructions had been constructed on property owned by the Municipality, which the Municipality needed for public purposes.
17. During the course of 2005, following the Decision of the Board of Directors of 14 March 2005, the Inspectorate of the Municipal Directorate for Urbanism and Public Services of the Municipality of Klina issued individual orders for the

demolition of temporary constructions in the municipality, both in cases where a temporary construction permit had previously been issued, and in cases where no permit existed. Owners of temporary constructions were given 15 days to demolish their constructions, or the Inspectorate would proceed to forced execution of its order.

18. At least sixteen (16) individuals whose properties were demolished as a consequence of these orders of the Inspectorate of the Directorate for Urbanism submitted administrative complaints to the Chief Executive Officer of the Municipality of Klina, in accordance with Section 35 of UNMIK REG. 2000/45 On Self-Government of Municipalities in Kosovo.
19. The Chief Executive Officer (CEO) of Klina rejected as unfounded the complaints of all sixteen complaining individuals. In accordance with UNMIK REG. 2000/45, all sixteen individuals submitted appeals against these decisions of the CEO of Klina to the central administrative authority, the Ministry of Environment and Spatial Planning.
20. The Ministry of Environment and Spatial Planning (MESP) approved the appeals of all sixteen applicants and annulled the decisions of the CEO of Klina on their complaints. The MESP issued the following individual decisions:
 - a. A-106/05, dated 20 March 2006;
 - b. A-78/05, dated 06 March 2006;
 - c. A-83/05, dated 15 March 2006;
 - d. A-76/05, dated 01 March 2006;
 - e. A-80/05, dated 01 March 2006;
 - f. A-84/05, dated 15 March 2006;
 - g. A-81/05, dated 13 March 2006;
 - h. A-77/05, dated 03 March 2006;
 - i. A-85/05, dated 14 March 2006;
 - j. A-75/05, dated 27 March 2006;
 - k. A-82/05, dated 14 March 2006;
 - l. A-70/05, dated 23 March 2006;
 - m. A-71/05, dated 24 March 2006;
 - n. A-79/05, dated 06 March 2006;
 - o. A-86/05, dated 16 March 2006; and
 - p. A-69/05, dated 16 March 2006.
21. In all sixteen cases, the MESP reasoned that the Chief Executive Officer of Klina, in its decisions on the appellants' complaints, had failed to determine the factual situation in a complete and correct manner, and had failed to pay due attention to the rules of procedure, which had rendered the decisions unfair. The MESP returned the cases of all sixteen appellants back to the deciding administrative authority (i.e. the Applicant) for review and re-consideration of its decisions.
22. The Applicant (i.e. the Municipality of Klina) submitted appeals against all sixteen of these decisions of the MESP to the Administrative Panel of the Supreme Court. The Applicant claimed in its appeal that the MESP decisions were not in compliance with the law, and that the law had been applied to the

detriment of the Municipality of Klina. The Applicant claimed that the MESP should have conducted a site visit in order to correctly determine the facts.

23. On 14 March 2007, in seven of the cases, and on 28 January 2009, in the remaining nine cases, the Administrative Panel of the Supreme Court rejected the Applicant's appeals as ungrounded in all sixteen cases. The relevant case numbers and dates of the judgments of the Supreme Court are given above in paragraph 2.
24. In all sixteen cases, the Administrative Panel of the Supreme Court reasoned that,

"The Court concluded that there are contradictions in this legal-administrative matter, which have not been avoided when decided by the first instance body [the Inspectorate of the Directorate for Urbanism], since there were not taken into consideration the evidence in the case file and were not provided reasons about decisive facts, important for fair decision of this legal matter and particularly the determination of the fact whether the urban plan for the town of Klina was approved, whether the decision for revocation of temporary permits was made, whether in the particular case we are dealing with removal of the temporary premises or the forced demolition of the premises, which appears in the phase of forced execution, which should not be the situation in this case, but also due to the fact that whether the deadline of the permit, according to which the construction of the temporary premises took place, has expired.

[...] For these reasons and aiming at avoiding highlighted flaws in the challenged ruling, the sued administrative body [i.e. MESP] annulled the challenged decisions and gave instructions that in the reopened procedure are eliminated shortcomings, with the purpose of rendering a fair and legal decision."

25. The Applicant does not appear to have taken any action in relation to these sixteen complaints following the decisions of the MESP and the judgments of the Administrative Panel of the Supreme Court.

Applicant's Allegations

26. As stated above, the Applicant alleges that the sixteen judgments of the Administrative Panel of the Supreme Court of Kosovo, indicated by number and date in paragraph 2 above, violated its rights guaranteed by the Constitution. Specifically, the Applicant alleges violations of Articles 12, 46, 121, 123, and 124 of the Constitution, as well as of Article 1 Protocol 1 of the ECHR.
27. The Applicant argues that the properties in the sixteen cases affected by the revocation of permits for temporary construction and the demolition orders of its Inspectorate of the Directorate for Urbanism are municipal properties for use for public purposes. The Applicant alleges that the judgments of the Supreme Court directly affect the Applicant's ability to exercise its property rights and to regulate the use of municipal land.

28. The Applicant further alleges that the municipal properties at issue had been usurped during the 1990s during the period of when the autonomous status of the province of Kosovo had been revoked, and that, by making these judgments, the Supreme Court was legitimizing this illegal usurpation of municipal land.
29. The Applicant also alleges that the Supreme Court's judgments violate its rights of local self-government under the Constitution. The Applicant argues that the decisions of the MESP and the judgments of the Supreme Court cannot be implemented because the land in question is municipal public property which cannot be returned to the respective private persons. The Applicant claims that to implement these decisions, and to return the properties, would lead to 'urban chaos and irreparable consequences' for the Municipality of Klina. The Applicant claims that in the intervening period the situation in the municipality has changed, and all of the affected properties have other urban destinations than they had at the time the initial demolition orders were implemented.
30. The Applicant requests the Constitutional Court to annul the judgments of the Supreme Court and the decisions of the MESP in these sixteen cases.

Admissibility of the Referral

31. First of all, in order to be able to adjudicate the Applicant's Referral, the Constitutional Court must examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
32. The Court refers to Article 113 (1) of the Constitution, which stipulates that,

"1. The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."
33. The Court should first examine if the Applicant is an authorized party to submit a Referral with the Court, pursuant to the requirements of Article 113 (4) of the Constitution.
34. Article 113 (4) stipulates that,

"4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act."
35. The Court notes that the Referral submitted by the Municipality of Klina pursuant to Article 113.4 of the Constitution does not "contest the constitutionality of laws or acts of the Government", but instead challenges sixteen decisions of the Supreme Court in administrative proceedings.
36. In this respect, the Court recalls Article 4 of the Constitution, which provides, *inter alia*, that,

“1. Kosovo is a democratic Republic based on the principle of the separation of powers and the checks and balances among them as provided by this Constitution.

[...]

4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.

5. The judicial power is unique and independent and is exercised by courts.

[...]”

37. As such, the Court considers that decisions of the Supreme Court of the Republic of Kosovo in administrative proceedings are not acts or laws of the Government within the meaning of Article 113 (4) of the Constitution (See, *mutatis mutandis*, Municipality of Gjakova v District Commercial Court, no. KO 123/10, Resolution of 21 May 2012).
38. However, even if the Applicant had submitted his Referral pursuant to Article 113.7 in conjunction with Article 21.4 (legal persons) of the Constitution with respect to the constitutional review of the challenged decisions, the Court would nevertheless consider the Applicant's Referral as being out of time, because from the day of publication of the decisions (28 January 2009) until the first day of attempting to submit the Referral (24 December 2009) more than four months have elapsed.
39. In that regard, Article 49 of the Law clearly establishes that: *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...”*

In relation to the request for imposing interim measure

40. The Court notes that the Applicant also requests from the Court to impose an Interim Measure.
41. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which provides: *“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages”*.
42. Also, the Court takes into consideration Article 27 of the Law, which provides:

“The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest”.

43. Furthermore, Rule 54 (1) of the Rules of Procedure provides:

“At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures”.

44. Finally, Rule 55 (1) of the Rules of Procedure provides:

“A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals”.

45. In order to impose an interim measure, the Court, pursuant to Rule 55 (4) of the Rules of Procedure, must find that:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and

(c) the interim measures are in the public interest.

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application”.

46. The Court concludes that since the Applicant’s Referral is rejected as inadmissible, the request for Interim Measure can no longer be subject of review and, therefore, the request for interim measure must be rejected.

47. In consequence, the Court finds that the Applicant in this case is not an authorized party, as required by Article 113 (1) of the Constitution to challenge the decisions of the Supreme Court because those decisions are neither laws nor acts that the Applicant could have challenged pursuant to Article 113.4 of the Constitution.

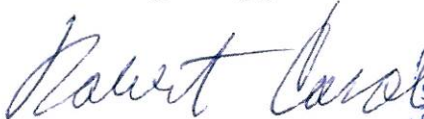
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (4) of the Constitution, Articles 27 and 40 of the Law and Rule 36 (3) c), Rule 55 and Rule 56 (2) and (3) of the Rules of Procedure, on 14 November 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the request for Interim Measure;
- III. TO NOTIFY the Parties of this Decision;
- 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



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani