



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

Pristina, 12.October 2011
Ref. No.: RK 141 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 116/10

Applicant

Lon Paluca

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. no. 286/2007, dated 6 May 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Lon Paluca, residing in Prizren and represented by Mr. Sahit Bibaj, a practicing lawyer from Pristina.

Subject Matter

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo (hereinafter: the "Supreme Court"), Rev.no. 286/2007, dated of 6 May 2010 and served on the Applicant on 15 November 2010, and by which his right to be compensated for property expropriation was allegedly violated.
3. The Applicant requests an assessment of the constitutionality of the Judgment of the Supreme Court, as being in violation of Article 46.1 and 46.3 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 1 [Protection of Property] of Protocol 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution.

Legal Basis

4. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 18 November 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 22 November 2010, the President appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges Ivan Čukalovič (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.
7. On 28 January 2011, the Referral was forwarded to the Supreme Court.
8. On 27 April 2011, the Court requested additional documents by the Municipality of Klina, showing whether the Applicant had received another premise to exercise his business activity.
9. On 27 April 2011, the Court requested additional documents by the Applicant, showing whether the Applicant had received another premise to exercise his business activity.
10. On 3 May 2011, the Municipality of Klina submitted its reply/documents, showing that the Applicant was not against the expropriation and that he did not want compensation but a premise so he could continue to exercise his business activity. Furthermore, the Applicant had only a temporary permit to exercise his business activity in the premise that was expropriated.
11. On 6 May 2011, the Applicant submitted the requested additional documents showing that the Applicant has never received compensation in respect to the expropriated property. However, the Applicant has not replied to the question whether he received another premise or not to exercise his business activity.
12. On 23 May 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

13. On 14 January 1975, the Applicant bought immovable property in the area of 0.03.20 hectares. The Applicant confirmed the sale contract at the court, paid the transaction price and gained possession and use of the immovable property.
14. On 18 January 1977, the Municipal Assembly of Klina, the Directorate of Economy, Municipal Affairs, and Legal-Property Affairs expropriated the Applicant's immovable property in favour of the self-governing community for housing interest and for the construction need of a socially-owned building in that immovable property (Decision No. 04-465-15/2). According to this decision, the Applicant had approved the expropriation but required compensation with a similar premise so he could continue with his business. In this respect, the Applicant initiated a judicial procedure before the Municipal Court to receive compensation for the expropriated property. However, there was no final court decision. After 1999, the Applicant made attempts to secure the case file and to continue the procedures, but was unsuccessful because the Municipal Court verbally informed the Applicant that his case was not with them and this was later confirmed in writing (Confirmation A.GJ. 276/2010 of 22 October 2010).
15. On 17 April 2001, the Applicant filed a suit for compensation with the Municipal Court in Klina.
16. On 16 October 2003, the Municipal Court of Klina upheld the Applicant's claim and instructed the opposing party, in relation to the expropriated property, to grant the Applicant permanent use of a premise of the same dimensions as the expropriated property, or that the Applicant is compensated in monetary value (C.no. 54/2001).
17. The Municipality of Klina appealed this judgment to the District Court of Peja.
18. On 8 May 2007, the District Court of Peja quashed the judgment of the Municipal Court rejecting the claim of the Applicant as ungrounded and concluded that the Applicant did not file a claim for compensation until 2001 and, therefore, the Applicant's claim for compensation was prescribed (Ac.no. 233/04).
19. On 9 July 2007, the Applicant filed a revision with the Supreme Court.
20. On 6 May 2010, the Applicant's claim for revision was rejected as ungrounded. The Supreme Court upheld the decision of the District Court (Rev.No. 286//2007) and further stated that the opposing party lacked passive legitimacy, because it was not the legal successor of those bodies that expropriated the property. The opposing party were recently-established bodies on the basis of UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo (hereinafter: UNMIK Regulation 2000/45) which provides that they will not undertake the obligations of the former Municipality of Klina.

Applicants' allegations

21. The Applicant alleges that his rights guaranteed by Article 46.1 and 46.3 [Protection of Property] of Constitution have been violated because he was never compensated for the expropriated property. The Applicant further alleges that the right guaranteed by Article 1 [Protection of Property] of Protocol 1 of ECHR, which is directly applicable as provided by Article 22 of the Constitution, has been violated.

Admissibility of the Referral

22. The Applicant complains that the Supreme Court has violated Article 46.1 and 46.3 [Protection of Property] of the Constitution, and Article 1 [Protection of Property] of Protocol 1 of ECHR, in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution.
23. However, in order to be able to adjudicate the Applicant's Referral, the Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
24. In this connection, the Court refers to Article 48 of the Law:

"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."
25. Under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
26. In fact, the Applicant does not substantiate any appearance of a violation of his rights, namely the right to a fair trial, guaranteed by the Constitution.
27. Therefore, the Constitutional Court can only consider whether the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, mutatis mutandis, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991). However, the Applicant has not made any allegation on the fairness of the proceedings conducted by the Supreme Court.
28. In conclusion, the Applicant has neither built a case on a violation of his right to a fair trial by the regular courts nor has he submitted any prima facie evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). Moreover, the Applicant has not accurately clarified, as required by Article 48 of the Law, what rights and freedoms he claims to have been violated by the Judgment of the Supreme Court.
29. It follows that the Referral is manifestly ill-grounded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 48 of the Law on the Constitutional Court, and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on ... 2011,

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

