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

Prishtina, 7 November 2016
Ref. no.: RK998/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI76/16

Applicant

The Government of the Republic of Kosovo

Constitutional review of Decision Rev. no. 41/2016 of the Supreme Court of Kosovo, of 14 March 2016

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is the Government of the Republic of Kosovo, which according to the authorization of the Ministry of Justice is represented by Shefqet Hasimi, senior legal officer of the Public Attorney's Office (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision Rev. no. 41/2016 of the Supreme Court of Kosovo, of 14 March 2016.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which according to the Applicant, is not in compliance with the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant does not specify what Article of the Constitution has been violated.

Legal Basis

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 16 May 2016 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 16 June 2016 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges Robert Carolan (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 13 July 2016 the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

8. On 13 September 2016, President of the Court appointed Judge Ivan Čukalović as Presiding of the Review Panel instead of Judge Robert Carolan who had resigned from the position of the Judge of the Court on 9 September 2016.

9. On 16 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. On 5 January 2012 the Government of the Republic of Kosovo (hereinafter: the Government), by Decision no. 03-55, expropriated the immovable properties situated in the cadastral plots nos. 800, 801, and 802 CZ Tërrnje in order to build the highway.

11. By decision of the Government, the amount of compensation for the expropriation of these plots was determined in the amount of 4 € per square meter, or a total amount of € 91,760 for these three plots.

12. On 15 February 2012, the owners of the cadastral plots, dissatisfied with the amount of compensation offered by the Government, appealed to the court, requesting to establish a fair amount of compensation for the expropriation of the immovable property and the lost profit.

13. On 15 May 2015 the Basic Court in Prizren - Suhareka Branch, by Decision CN. no. 159/13, based on the reasoned opinions of two experts, determined the compensation as follows:

> *"For the expropriated property plots nos. 800, 801, and 802 of CZ Tërrnje, in the amount of 146.320,00 €*
> *For the lost profit for alfalfa 6.580,00 €,*
> *Total amount of compensation is 152.900,00 € (one hundred and fifty two thousand and nine hundred euro). "*

14. In gathering evidence, the Basic Court hired a financial expert for determining the value of the expropriated plots, while for determining the amount of the lost profit, the Basic Court hired an expert in the field of agriculture at the proposal of the Government.

15. Against the Decision of the Basic Court, the Government filed an appeal on the grounds of essential violation of the provisions of the Law on Contested Procedure, erroneous determination of the factual situation and erroneous application of the substantive law.

16. On 26 October 2015 the Court of Appeals, by Decision CA no. 3578/2015, rejected as ungrounded *"the appeal of the authorized representative"* of the Government and upheld the decision of the Basic Court.

17. The Government filed a request for revision against the Decision of the Court of Appeals on the grounds of essential violation of contested procedure provisions and erroneous application of the substantive law and proposed that both abovementioned decisions be annulled and the case be remanded for retrial to the first instance court.

18. On 14 March 2016 the Supreme Court, by Decision Rev. 41/2016, rejected as ungrounded the Applicant's revision filed against the Decision of the Court of Appeals.

Applicant's allegations

19. The Court notes that the Applicant did not state what constitutional rights or what provisions of the Constitution have allegedly been violated.

20. The Applicant requests the Court *"to review the lost profit [...] to ascertain the constitutional ground for the lost profit in the confirmed amount of € 6,580.00, as to whether such ground exists or not. "*

21. In support of his requests, the Applicant attaches Decision Rev. no. 4/2014 of the Supreme Court, of 19 March 2014, by which it decided on the lost profit and the expropriation of other immovable properties that had nothing to do

with this case, and by which the Supreme Court partially approved the revision of the Applicant and reduced the amount of lost profit.

22. The Applicant also alleges that there is a huge difference between the amount of compensation of *"6, 29 € and 6, 42 €"for* one square meter determined by the regular courts based on the opinion of the experts and the amount of compensation of *"4 €"for* one square meter, determined by the decision on expropriation of the Government.

23. The Applicant considers that the assessment of the experts is *"too high" and* that *"the expertise report compiled by a professional experts must have a reasonable difference. This difference between experts' reports was approved by the Court, while it has no legal support and is not based on the expertise report compiled by the expert from the agriculture field."*

Admissibility of the Referral

24. The Court first has to examine whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and Rules of Procedure.

25. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *"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."*

26. In addition, the Court refers to paragraph 4 of Article 21 [General Principles] of the Constitution which establish:

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

27. The Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides:

> *"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."*

28. In addition, the Court recalls Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, which foresees:

> *"(1) The Court may consider a referral if:*
> *[...]*
> *(d) the referral is prima facie justified or not manifestly ill-founded."*

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that

[...]

d) the Applicant does not sufficiently substantiate his claim."

29. The Court observes that the Applicant basically requests the Constitutional Court to engage in the determination of the factual situation, and to *"determine the ground of constitutionality for the lost profit"* as well as to assess the constitutionality of the amount of compensation for the expropriated property.

30. The Court notes that the Applicant does not agree with the conclusions of the regular courts regarding the amount of the lost profit and the amount of compensation for the expropriated property, but that it does not specify what Articles of the Constitution were violated.

31. The Applicant essentially challenges the interpretation of the way in which the regular courts determined the amount of the lost profit and the amount of compensation for the expropriated property. This interpretation was reasoned by the regular courts in three instances and their conclusion was reached after detailed examination of all the arguments presented by the Applicant.

32. Moreover, the Court considers that the Applicant did not accurately and specifically state which rights had been violated and did not explain how and why the Decision of the Supreme Court had violated his constitutional rights. It only requests the Court to *"determine the constitutionality of the ground for the lost profit"* and has not provided any *prima facie* evidence which would point to a violation of its constitutional rights (see *Vanek vs. Slovak Republic*, no. 53363/99, ECtHR, Decision, of 31 May 2005).

33. In fact, the Court recalls that the Basic Court in Prizren (Suhareka Branch), by Decision CN. no. 159/13, determined the compensation based on the findings of the two experts who were also heard in the proceedings where the evidence was presented. The Basic Court gave a detailed explanation of the way in which it had determined the amount of the lost profit and the amount of compensation for the expropriated property.

34. This factual situation determined by the Basic Court and the reasoning for such a factual situation, was approved as fair by the Court of Appeals and the Supreme Court.

35. The Court also considered the Applicant's allegations that the amount of compensation is *"too high" and* made by *„the experts who are not professional in the field of agriculture."*

36. The Court notes that the Applicant's allegations are not accurate; on the contrary, the Basic Court approved the proposal of the authorized representative of the Government and engaged an expert in the field of agriculture, and based on the expert's reasoned opinion was determined the amount of the lost profit and the amount of compensation for the expropriated property.

37. The Applicant was given the opportunity at various stages of the proceedings to submit arguments and evidence it considered relevant for its case. At the same time, it was given the opportunity to challenge effectively the arguments and evidence presented by the responding party and to challenge the interpretation of the law in the proceedings before the Basic Court, the Court of Appeals and the Supreme Court.

38. The Court considers that all the arguments of the Applicant that were relevant for the resolution of the dispute, were duly heard and duly examined by the regular courts, that the material and legal reasons for the decision challenged by the Applicant were presented in detail and that the proceedings before the regular courts, viewed in their entirety, were fair.

39. In this respect, the Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. The Court notes that the Applicant repeats before the Court the same arguments as it filed in the proceedings before the Court of Appeals and the Supreme Court, which both provided a reasoned response to the Applicant's allegations.

41. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

42. Although the Applicant claims that its rights have been violated by erroneous determination of the factual situation by the regular courts, it did not show how the abovementioned decisions violated its constitutional rights.

43. The Applicant did not substantiate that the relevant proceedings have been in any way unfair or arbitrary (See, *mutatis mutandis*, *Shub vs. Lithuania*, no. 17064/06, ECHR Decision, of 30 June 2009).

44. In these circumstances, the Court considers that the admissibility requirements have not been met. The Applicant did not present and substantiate the allegations that the challenged decision violated its constitutional rights and freedoms.

45. Therefore, the Court must conclude that the Referral is manifestly ill-founded and has to be declared inadmissible in accordance with Rule 36 (1) (d) and (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Articles 21.4 and 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 16 September 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Arta Rama-Hajrizi