



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

Pristina, 01 march 2012
Ref. No.: AGJ203/12

JUDGMENT

in

Case No. KO 4/11

Applicant

Supreme Court of Kosovo

**Constitutional Review of Articles 35, 36, 37 and 38 of the Law on Expropriation
of Immovable Property, No. 03/L-139**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicant

1. The Applicant is the Supreme Court of the Republic of Kosovo.

Legal Basis

2. The Referral is based on Art. 113.8 of the Constitution; Articles 51, 52, 53 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"), and Rule 75 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules").

Subject Matter

3. The subject matter of the Referral is a request by the Supreme Court to assess the constitutionality of Articles 35, 36, 37 and 38 of the Law on Expropriation No. 03/L-139.

The Applicant's Submission

4. The Applicant argues, firstly, that Articles 35, 36, 37 and 38 of the 2009 Law are in contradiction with Article 102 (5) of the Constitution, which in the relevant part reads as follows:

"...The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal."

5. The Applicant states that the contested Articles require the parties in proceedings to submit appeals with a Municipal Court, if the decision was issued by a Municipal Authority, and by the Supreme Court, if the decision on expropriation was issued by the Government.
6. The Applicant further states that *"These decisions can be appealed ..."* and that it is implied therefore that the Supreme Court decisions may also be appealed, although, there is no provision for an appeal against a decision of the Supreme Court allowed by the Constitution.
7. The Applicant argues that the parties are put in an unequal situation; when the Municipal Court issues a decision, parties have right to pursue all remedies, including the remedy before the Supreme Court, but when the first instance decision is issued by the Supreme Court it is unclear which is the Court of the appellate jurisdiction. Consequently, according to the Applicant, the said Articles of the 2009 Law on Expropriation are in contradiction with Article 24 (1) of the Constitution, which reads as follows: *1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
8. The Applicant further argues that the said Articles are in contradiction with Article 32 of the Constitution [Right to Legal Remedies], which reads as follows: *"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."* In this respect the Applicant argues that although the said Articles of the 2009 Law on Expropriation formally provide for a right to appeal there is, in fact, no further Court that would decide such an Appeal from the Supreme Court.
9. The Applicant further argues that the said Articles of the 2009 Law on Expropriation contravene the Law on Non Contentious Procedure and the Law on Regular Courts.
10. Finally, the Applicant argues that implementation of the contested provisions of the 2009 Law would have a negative impact on the backlog of cases before the Supreme Court. The Applicant stated that at the time of making the Referral there were about

200 cases on expropriation in Prizren. The Applicant further states that “Many more cases will come on the occasion of expropriation up to Merdare; there will surely be thousands of such cases. In such situations, the observance of time limits stipulated by law would simply be utopian, even if we had 30 judges more to deal with these cases only.”

Proceedings before the Court

11. On 17 January 2011, the Applicant filed a Referral with the Secretariat of the Constitutional Court.
12. On 14 February 2011, the President of the Constitutional Court appointed Judge Ivan Čukalović as the Judge Rapporteur and he appointed a Review Panel composed of Judges Robert Carolan, presiding, Altay Suroy and Iliriana Islami.
13. On 11 May 2011 the Court notified the receipt of the Referral to the President of the Supreme Court and to the President of Assembly of the Republic of Kosovo.
14. On 17 June 2011 the Constitutional Court requested the Applicant, pursuant to Article 113(8) of the Constitution to refer to particular judicial proceedings, i.e. a case, in which the Applicant was uncertain as to the compatibility of the contested law with the Constitution. The Constitutional Court also asked the Applicant to clarify whether their request addressed the Law on Expropriation of Immovable Property with amendments and supplements (2010/03-L-205, hereinafter referred to as the “2010 Amendments to the 2009 Law on Expropriation) or the 2009 Law on Expropriation of Immovable Property (2009/03-L-139).
15. On 12 July 2011 the Applicant replied to the Constitutional Court clarifying that the referral has been addressed regarding constitutionality of the 2009 Law on Expropriation. By the same letter the Applicant reiterated that the contested provisions of the aforementioned 2009 Law were Articles 35, 36, 37 and 38.
16. On 20 October 2011 the Supreme Court forwarded to the Constitutional Court two cases out of some two hundred and fifty appeals that had, by then, been submitted by the owners of land who challenged a final decision of the Government of Kosovo on evaluation of the amount for compensation for the expropriated property in order to construct the Vermice – Merdare national highway.
17. On 24 October 2011 the Constitutional Court notified to the Government of Kosovo of the making of the Referral.
18. On 3 November 2011 the Constitutional Court requested the Supreme Court to suspend all procedures in relation to cases pending before it concerning the application of the contested Articles of the Law on Expropriation, pursuant to Article 53 of the Law on the Constitutional Court.

Comments from Parties

19. The Constitutional Court has not received comments on the Referral from the Assembly of the Republic of Kosovo or from the Government of Kosovo.

Contested provisions of 2009 Law on Expropriation and its relationship with 2010 Amendments to the 2009 Law on Expropriation

20. The 2009 Law on Expropriation was amended in 2010 by the Law on Amending and Supplementing Law No. 03/L-139 on Expropriation of Immovable Property, Law no. 03/L-205. *Inter alia*, these amendments affected, in part, all the contested Articles 35, 36, 37 and 38 of the Law on Expropriation. However, these amendments did not affect the substance of the Referral, which concerned, in what Court proceedings were to be brought when challenging a decision of an Expropriating Authority. It remained the case that when the Expropriating Authority was a Municipality the Municipal Court was the correct venue where the land was situate and when the Expropriating Authority was the Government the correct venue was the Supreme Court

Contested provisions of the 2009 Law on Expropriation

21. Therefore, for the sake of completeness, and for the purposes of understanding the issues that were raised in this Referral in their current context, the relevant text of the contested provisions as amended by the 2010 Law is set out as follows:

CHAPTER XI LEGAL REMEDIES

Article 35

Complaints Challenging a Preliminary Decision on the Legitimacy of a Proposed Expropriation

- 1. If a Person is an Owner or an Interest Holder with respect to immovable property that is the subject of an expropriation procedure, and such Person reasonably believes that the concerned Preliminary Decision – or any aspect thereof - is contrary to one or more of the conditions established in paragraph 1 of Article 4 of this law, such Person shall have the right to file a complaint with a court of competent jurisdiction challenging such Preliminary Decision, in whole or in part.*
- 2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. ...*

Article 36

Complaints Challenging the Adequacy of Compensation

- 1. If an Expropriating Authority issues a Final Decision under Article 11 of this law, any concerned Owner or Interest Holder with respect to property and/or rights expropriated by such decision may file a complaint with a court of competent jurisdiction challenging the amount of compensation and/or damages that such decision provides shall be paid to such Owner and/or Interest Holder.*
- 2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. ...*

Article 37

Complaints for Compensation for Damages Arising from a Partial Expropriation

- 1. If, as provided in paragraph 3 of Article 18 of this law, a Final Decision authorizes the expropriation of part of a parcel of immovable property and, as a result, the un-expropriated part suffers, or is reasonably expected to suffer, a loss of value, the Owner of the un-expropriated part such shall have the right to file a complaint under this Article requesting the competent court to issue a judgment ordering the Expropriating Authority to pay compensation for such loss in value, if and to the extent such compensation is not provided for in the Final Decision.*
- 2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating*

Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo. ...

Article 38

Complaints Challenging the Legitimacy of a Decision Authorizing the Temporary Use of Property

1. If a Person is an Owner or an Interest Holder with respect to immovable property that is the subject of a decision issued by the Government authorizing the temporary use of such property, and such Person reasonably believes that the decision does not satisfy the conditions specified in Article 29 of this law, such Person shall have the right to file a complaint with the Supreme Court of Kosovo challenging such decision.

...

22. It is appropriate here to quote one further important Article of the amended Law on Appropriation and that is Article 39. This Article was unaffected by the amendments brought about by the 2010 Law and is the same in the original as in the consolidated Law. It provides that when dealing with disputes within the scope of the contested Articles if there is a conflict between the provisions of the contested Articles and the provision of the Law on Administrative Procedure or any other procedural law these Articles shall prevail. It provides, in full, as follows:

Article 39

Other Disputes

1. Complaints and other legal disputes falling within the scope of Article 35, 36, 37 or 38 of this law shall be handled as provided in those Articles. In the event of a conflict between such an Article and the provisions of the Law on Administrative Procedure or any other procedural law, such Article shall prevail.

2. All other legal disputes relating to an act taken or a decision adopted by a Public Authority under the authority of this law shall be subject to and governed by the applicable provisions of the Law on Administrative Procedure; provided, however, that any provision of the Law on Administrative Procedure eliminating or unreasonably restricting the right of an affected Person (a Person who has been specifically affected by such an act or decision) to file a complaint with a competent court challenging such act or decision shall be not be applied.

Preliminary Assessment of the Admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
24. The Applicant submitted the referral to the Court in accordance with Article 113 (8) of the Constitution, which reads as follows:

The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.

25. The Law on the Constitutional Court further specifies procedure for referrals submitted under Article 113, (8) of the Constitution. In particular Article 51 reads as follows:

Article 51

Accuracy of referral

1. *A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.*
 2. *2. A referral shall specify which provisions of the law are considered incompatible with the Constitution.”*
26. Finally the Rules of the Procedure of the Constitutional Court provides, *inter alia*, as follows:

Rule 75

Filing of Referral

- (1) *Any Court of the Republic of Kosovo may submit a Referral to the Court pursuant to Article 113.8 of the Constitution, ex officio, or upon the request of one of the parties to the case.*
 - (2) *The referral shall state why a decision of the court depends on the question of the compatibility of the law to the Constitution. The file under consideration by the court shall be attached to the referral.*
 - (3) *(3) Any Court of the Republic of Kosovo may file a referral to initiate the procedure pursuant to Article 113. 8 of the Constitution regardless of whether a party in the case has disputed the constitutionality of the respective legal provision. “*
27. In brief, the entirety of these provisions means that when a court is dealing with a pending case and it is unsure whether the law that has to be applied is compatible with the Constitution then that court may refer a question about the compatibility of the law with the Constitution to this Court. Of course, there have to be proceedings in being where the question is relevant to the decision to be made by the referring court.
28. The particular Articles of the Law that raise the doubt in the mind of the court must be clearly set out and the details of the case under consideration should be attached to the Referral. The proceedings in the local court shall be suspended automatically when the Referral is made pending a decision of this Court.
29. Therefore, in order to assess admissibility this Court has first to consider if the contested law is to be directly applied by the Applicant with regard to a pending case and secondly and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the Applicant. Thirdly it is important to see if the Applicant specified which provisions of the contested law are considered incompatible with the Constitution.
30. It is clear from the Applicant's submissions as well as from the text of the contested provisions of the 2009 Law on Expropriation that the Applicant will have to apply the contested Articles of that Law.

31. As regards to the second condition the Court notes that Applicant forwarded two complaints from owners of expropriated land that had been submitted to the Applicant pursuant to the contested provisions of the 2009 Law on Expropriation. Both of these complaints concerned decisions of the Government to expropriate immovable property in Suhareka. Decisions have not yet been made by the Supreme Court in those cases. The Supreme Court has a doubt as to the constitutionality of the contested Articles and it is uncertain as to the compatibility of the Articles with the Constitution. This Court is satisfied that the Appellant's decision is dependent on the constitutionality of the Articles in question.
32. Finally the Court notes that the Applicant specified which provisions of the contested law are considered incompatible with the Constitution, Articles 35, 36, 37 and 38.
33. There are no other reasons for this Court to consider that the Referral is inadmissible and, consequently, the Court finds that it is admissible and it will deal with the merits of the Referral.
34. This Referral is the first case submitted by any Court in Kosovo where such Court has been uncertain as to the compatibility of a law with the Constitution and where the power under Article 113(8) of the Constitution has been exercised. Article 113(8) of the Constitution is a powerful tool in the administration of justice as it allows all Courts in Kosovo to refer questions of constitutional compatibility to this Court. Provided there is a pending case and the case depends on the question then there is no obstacle to the Referral.
35. There may arise many circumstances where local Courts have doubts or uncertainty as to whether the application of a law will infringe human rights and fundamental freedoms guaranteed by the Constitution and by the international instruments that are directly applicable in Kosovo, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols. This Court is positioned within the constitutional framework to answer such questions and courts are empowered to submit such questions.

Assessment of the Merits

36. In essence, the Supreme Court makes two main points in relation to the contested provisions of the 2009 Law on Expropriation. The first is that because there are two different judicial procedures that persons having land expropriated can be obliged to use that there is a breach of the Constitution. One procedure is when a public authority other than the Government wishes to acquire the land. In such a case the procedure is to apply to the appropriate Municipal Court where the land is situated. However, if the land to be acquired is for the Government then the procedure is to apply to the Supreme Court. The same rule applies whether the challenge is in relation to the preliminary decision on the legitimacy of a proposed expropriation, the adequacy of compensation, damages arising from partial expropriation or the legitimacy of a decision authorizing the temporary use of property.
37. The second point the Applicant makes is that there are substantial number of cases lodged with the Supreme Court already arising from the expropriation in Prizren Municipality and many more expected arising from expropriations that are expected to take place along the route of the Vermice – Merdare Highway. This Court notes the building by the Government of Kosovo of a national highway from Vermice to Merdare.
38. As to the first point, can it be argued that because there are two avenues of recourse for expropriation by different bodies, *ipso facto*, there is a breach of the Constitution,

whether arising from discrimination or otherwise? When one looks at the persons who may expropriate land in the Republic of Kosovo the Definitions in the Law define “Expropriating Authority” as meaning “a Municipality or the Government having the authority to expropriate property under the present law.” It is clear therefore that both Municipalities and the Government are the bodies that may exercise expropriation.

39. On examination of Article 4 of the Law on Expropriation there are general conditions that must be met if any Expropriating Authority wishes to expropriate immovable property. These general conditions are:

1. An Expropriating Authority shall have the authority to expropriate immovable property only when all of the following conditions are satisfied:

1.1. the Expropriation is directly related to the accomplishment of a legitimate public purpose within its competence as specified in paragraph 2 or 3 of this Article;

1.2. the legitimate public purpose cannot practically be achieved without the Expropriation;

1.3. the public benefits to be derived from the Expropriation outweigh the interests that will be negatively affected thereby;

1.4. the choice of the property to be expropriated has not been made for, or in the furtherance of, any discriminatory purpose or objective; and

1.5. the Expropriating Authority has complied with all applicable provisions of this law.

40. Article 4 then goes on to state what separate conditions apply to Municipalities when they wish to expropriate land for their functions. These functions are, not surprisingly, related to the mandate of a Municipality in relation to its planning, construction of municipal roads, public facilities and such like. They are set out as follows:

“... The Expropriating Authority of a Municipality may expropriate immovable property only if:

2.1. the conditions specified in paragraph 1 of this Article are satisfied;

2.2. the Expropriation will exclusively affect private rights falling within the scope of paragraph 3 of Article 3 of this law;

2.3. the concerned immovable property lies wholly within the Municipality’s borders, and

2.4. the Expropriation is clearly and directly related to the accomplishment of one of the following public purposes:

2.4.1. the implementation of an urban and/or spatial plan that has been adopted and promulgated by a Municipal Public Authority in accordance with all applicable legal requirements;

2.4.2. the construction or enlargement of a building or facility to be used by a Municipal Public Authority to fulfill

2.4.3. the construction, enlargement, establishment or placement of any of the following infrastructure

welfare of the municipality or provides a public benefit

municipality and otherwise complies with applicable legal requirements:

2.4.3.1. municipal roads (roads lying entirely within the Municipality) providing transportation services to the public;

2.4.3.2. public facilities needed for the provision of public education, health and/or social welfare services within the Municipality by a Municipal Public Authority;

2.4.3.3. pipes for providing public water and sewage services to residences within the Municipality;

- 2.4.3.4. *municipal landfill*
- 2.4.3.5. *municipal public cemeteries; or*
- 2.4.3.6. *municipal public parks and municipal public sports facilities; or*
- 2.4.4. *the acquisition of the surface rights needed by a Municipal Public Authority to implement an artisanal mining license granted to the Municipality by the ICMM pursuant to the Law on Mines and Minerals."*

41. Different conditions apply to the Expropriating Authority is the Government. Here the functions relate to such things as inter-municipal roads, railways, generation and transmission of energy, telecommunication lines and facilities, dams, public water reservoirs and others. They are provided for in the following terms:

3. *The Government shall have the authority to expropriate property for any legitimate public purpose not specified in sub-paragraphs 2.4.1 through 2.4.4 of this Article if the conditions specified in paragraph 2 of this Article are satisfied. With respect to such an Expropriation, the Government shall be the Expropriating Authority. Legitimate public purposes within the scope of this paragraph shall include, but not be limited to, the following:*

3.1. *the implementation of an urban and/or spatial plan that has been adopted and promulgated by a Central Public Authority in accordance with all applicable legal requirements;*

3.2. *the construction or enlargement of a building or facility to be used by a Central Public Authority to fulfill its public functions;*

3.3. *the construction, enlargement, establishment or placement of infrastructure and/or facilities that promote the general economic and/or social welfare of Kosovo or provide another public benefit, including, but not limited to, the construction, enlargement, establishment or placement of:*

3.3.1. *state or inter-municipal roads providing transportation services to the public, including toll roads;*

3.3.2. *railways providing transportation services to the public;*

3.3.3. *works, facilities, safety areas or fuel storage or disposal sites for or relating to the generation, supply, transmission or distribution of energy;*

3.3.4. *mines and other works, safety areas and facilities for or relating to activities involving the exploitation of mineral resources;*

3.3.5. *telecommunication lines and facilities, including telegraph and telephone lines, as well as radio and television facilities;*

3.3.6. *public facilities needed for the provision of public education, health and/or social welfare*

3.3.7. *trunk pipelines required by a POE to provide water and sewage services to the public;*

3.3.8. *landfill*

3.3.9. *dams;*

3.3.10. *public water reservoirs;*

3.3.11. *state cemeteries for distinguished veterans and public servants;*

3.3.12. *public airports, including the required security zones around public airports;*

3.3.13. *state public parks and state public sports facilities;*

3.3.14. *environmental or nature reserves, including those to which public access may be restricted; or*

3.3.15. *works, infrastructure, facilities, areas or sites covered by, or reasonably needed for the implementation of an Infrastructure Contract awarded by a Tendering Body; or*

3.4. *the protection of a monument of cultural heritage or a site of significant archeological, historic or scientific nature, but only if the site has been lawfully designated as such by a resolution of the Assembly and either:*

3.4.1. *the owner of the immovable property where such a monument or site is located refuses to protect or – due to objective impossibility – cannot protect such monument or site; or*

3.4.2. *such owner agrees to or requires the concerned property to be expropriated.*

42. It appears to the Court that the legislators when enacting this Law were conscious of the distinction between expropriation by Municipalities and by the Government. In the contested Articles the Assembly provided that there should be different appeal mechanisms for expropriations by Municipalities and for expropriations by the Government. One can understand why this is so. Municipalities are confined to expropriations within their jurisdiction and for their particular statutory functions. They are localized within the area of the Municipality alone.
43. The expropriations by the Government have a different nature. Generally, these expropriations are more focused on the benefit of the national infrastructure. There is an obvious benefit to having one overall authority in charge of the national development and the Assembly has determined that this power shall belong to the Government.
44. The Court finds it hard therefore to see that there is discrimination against anyone in relation to the “appeal” mechanisms that have been adopted in the Law on Expropriation. Nobody is denied the right to recourse to a judicial determination of their causes of complaint arising from decisions to expropriate immovable property or on the amount of compensation. For Municipal expropriations the venue of first instance is the Municipal Court where the property is situated. For Government expropriations the first and only instance is the Supreme Court.
45. The Constitutional Court bears in mind the particular permission contained in Article 102 [General Principles of the Judicial System] which allows a case to be referred directly to the Supreme Court without right of appeal, where it is specifically provided that:
“...The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.”
46. Therefore, this Court is satisfied that there is no constitutional violation in providing that appeals against decisions of Municipalities are dealt with in the relevant Municipal Court and by providing that appeals against decisions of the Government are dealt with in the Supreme Court.
47. Any argument about how parties affected by an expropriation decision may be confused as to the procedure to be applied in pursuing a grievance is answered by reference to Article 39 of the Law on Expropriations which provides that it is the provisions of Articles 35, 36, 37 and 38 which shall prevail: *“1. Complaints and other legal disputes falling within the scope of Article 35, 36, 37 or 38 of this law shall be handled as provided in those Articles. In the event of a conflict between such an Article and the provisions of the Law on Administrative Procedure or any other procedural law, such Article shall prevail.”*
48. The second argument of the Applicant concerns the volume of cases that may be lodged with it arising from the construction of the national highway and the numerous expropriations that may follow. It may be that many persons will be aggrieved with decisions to expropriate land along the proposed route. Questions challenging a preliminary decision on the legitimacy of a proposed expropriation may occur in large numbers. However, the principles arising from these decisions may well be settled in the first cases decided on the merits. Complaints challenging the adequacy of

compensation must follow the general principle of market value for the expropriated property as provided for in Article 15 of the Law on Expropriation:

Article 15

Basic Rules Governing the Determination of Amount of Compensation

1. Compensation shall be paid on the basis of the market value of the property as determined in accordance with the further provisions of this law and the subsidiary legislation issued pursuant to paragraph 6 of this Article.

49. The Courts of Kosovo, including the Supreme Court have the ability to apply this well established basis principle. It may be that large numbers of cases will not be referred to the Supreme Court as it anticipates.
50. This Court has previously pointed out that the Constitution is based on the doctrine of the separation of powers. In its Judgment in Referral, KO 98/11, dated 20 September 2011, Concerning the immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo the Court said, at paragraph 44, *“The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a State. The essence of the independence and effective functioning of these branches is the immunity provided to the persons embodying these powers.”*
51. The Constitutional Court should not lightly interfere in the sphere of decision making of the Assembly when it decided on these challenged provisions, all the more so, when the remedy for the issue of dealing with a large number of cases is within the competence of the Applicant and the Assembly, be it in the allocation of extra resources to the Supreme Court to enable it to deal with the anticipated work load from the new Law on Expropriation, or the timely offer of full compensation for the expropriated property. These are matters entirely within the jurisdiction of and for discussion, if appropriate, between the judiciary, the legislature and the Government. The primary responsibility for the proper administration of Justice is the Government
52. The Constitutional Court cannot find that there is a violation of the Constitution on Kosovo on that basis either.

FOR THESE REASONS

Pursuant to Article 113.8 of the Constitution, Articles 51, 52, 53 of the Law and Rule 75 of the Rules, the Constitutional Court, by majority decision

DECIDES

- I. To hold that the Referral is admissible;
- II. To hold that Articles 35, 36, 37 and 38 of the Law on Expropriation, Law No. 03/L-139 are compatible with the Constitution of Kosovo;
- III. Orders that this Judgment be served on the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette; and
- IV. Declares that this Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Ivan Čukalović

Prof. Dr. Enver Hasani

