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

Prishtina, 16 May 2014
Ref. no.: RK623/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI08/14

Applicant

Skënder Gashi

Constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 118/2010, of 4 March 2013

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Skënder Gashi (hereinafter: the Applicant), residing in Municipality of Klina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo Rev. no. 118/2010, of 4 March 2013, which was served on him on 23 September 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo Rev. no. 118/2010, of 4 March 2013, which, according to the Applicant's allegations, violated Articles 22 [Direct Applicability of International Agreements and Instruments] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 20 January 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 February 2014, the President by Decision no. GJR. KI08/14 appointed Robert Carolan as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI08/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 5 March 2014, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of Referral.

8. On 27 March 2014, the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, considered the report of the Judge Rapporteur Robert Carolan made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. On 25 April 1979, the Municipality of Klina, by Decision 04-462-2/2, expropriated a part of the cadastral plot no. 1911, in surface area of 0.06,79 ha, which based on the sale-purchase contract, certified under the number 504/75 of 7 December 1975, from the ownership of the Applicant, registered in the possession list no. 220 CZ-Drsnik.

10. On 26 April 1979, the Municipality of Klina by Decision, 04-462-2/2 expropriated a part of the cadastral plot no. 1900/3, in surface area of 0.03.70

ha, from the Applicant, which according to the registration in the possession list, no. 360 CZ-Drsnik was in the ownership of the Applicant.

11. On 29 June 1979, the Municipality of Klina, by Decision 04-462-2/2 expropriated a part of the cadastral plot no. 1908, in a surface area of 0.07,30 ha, which according to the registration in the possession list, no. 321 CZ-Drsnik was in the ownership of the Applicant's brother, now deceased Hamit Gashi. On 14 May 2001 the Applicant, based on the contract of replacement, Leg. No. 658/2001 became the owner of the parcel.

12. Based on the above-mentioned three decisions, the Municipality of Klina expropriated a total surface area of 00.17, 79 ha, for the construction of housing, buildings, and roads.

13. On 19 July 2002, the Applicant filed a claim with the Municipal Court in Klina, that the Municipality of Klina compensates him monetary equivalent value for the expropriated property, because he was not compensated for this immovable property or, in the alternative, to allocate to him construction-urban land of equivalent value for permanent use in Klina.

14. On 24 January 2008, the Municipal Court in Klina, by Judgment C. no. 150/2006 approved as grounded the Applicant's statement of claim and ordered the following;

> *"The respondent, Klina Municipality on behalf of the compensation for the expropriated land, is obliged that within a 15 day time limit from the day the Judgment is served, to allocate in the permanent use of claimant Skender Gashi from Klina an area of 00.17,79 ha of urban construction land with the construction permit in the town of Klina, or in case of inability to allocate the urban construction land with construction permit on behalf of compensating the equivalent value of the expropriated land with the area of 00.17,79 ha, he is paid the amount of 266.930,00 €, with the legal interest Commercial Banks in Kosovo pay to their clients on bank deposits starting from 3.6.2005 until the final payment."*
>
> *"The respondent is also obliged to compensate to the claimant within the same time limit the amount 10.080,00 Euros, due to the damage caused by the destruction of the fruit trees in the expropriated land, again with legal interest starting from 3.6.2005 until the final payment."*
>
> *"The respondent is obliged to compensate to the claimant within the same time limit the expenses of the contested procedure at the amount of €2.605."*

15. Against the Judgment of the Municipal Court in Klina C. no. 150/2006 of 24 January 2008, the Municipality of Klina, as a respondent, filed in a timely manner an appeal alleging substantial violations of the contested procedure provisions, erroneous and incomplete determination of the factual situation and erroneous application of the material law, with the proposal that the appealed judgment be modified and the claimant's statement of claim be rejected as ungrounded, or to annul the same and to remand the case to the first instance court for reconsideration and retrial.

16. On 12 April 2010, the District Court in Peja, by Judgment Ac. no. 220/08 modified the Judgment of the Municipal Court in Klina C. no. 150/06 of 24 January 2008, and ordered the following:

> *"REJECTED in entirety as ungrounded the statement of claim of claimant Skender Gashi from Klina, by which he requested that within a 15 day time limit from the day the Judgment was rendered, on behalf of the compensation for the expropriated land, the respondent Klina Municipality is obliged to allocate to the claimant in permanent use an area of 00.17,79 ha of urban construction land with the construction permit in the town of Klina, or in case of inability to allocate the urban construction land with construction permit on behalf of compensating the equivalent value of the expropriated land with the area of 00.17,79 ha, he is paid the amount of 266.930 €, with the legal interest the Commercial Banks pay to their clients on bank deposits starting from 3.6.2005 until the final payment. It was also sought that within the same time limit the respondent would compensate to the claimant the amount 10.080 €, with legal interest starting from 3.6.2005 until the final payment, due to the damage caused by the destruction of the fruit trees in the expropriated land, and also cover the claimant's expenses of the contested procedure at the amount of 2.605 ."*

17. Against the Judgment of the District Court in Peja Ac. no. 220/08 of 12 April 2010, the Applicant filed revision, in a timely manner, alleging erroneous application of the material law, with the proposal that the Judgment of the District Court in Peja Ac. no. 220/08 of 12 April 2010, be modified, so that the Judgment of the Municipal Court in Klina C. no. 150/2006 of 24 January 2008, would remain in force.

18. On 4 March 2013, the Supreme Court of Kosovo, by Decision Rev. no. 118/2010 rejected, as ungrounded the revision of the Applicant, filed against the Judgment of the District Court in Peja, Ac. no. 220/2008 of 12 April 2010, with the following reasoning:

> *"In the appealed procedure, the second instance court found that the first instance court has correctly determined factual situation, but erroneously applied the material law, therefore pursuant to Article 373, paragraph 1, item 4 of the LCP it modified the appealed judgment and rejected the statement of claim as not grounded."*
>
> *"The Supreme Court of Kosovo, by approving the allegations and the legal stance from the reasoning of the second instance judgment, found that the material law had been correctly applied by that court, when modified the first instance court judgment rejected the claimant's statement of claim as not grounded."*
>
> *"Pursuant to Article 371 of the LOR, amended with Article 58 of the Law on Amending and Supplementing this law, the general time limit for statute of limitation of the claim is 10 years. The above mentioned expropriation rulings date from 1979, whereas the claim was submitted on 19.07.2002 that is 23 years later. This court adds that the claimant did not deny the*

fact that the respondent has immediately entered into possession and pursuant to Article 20 of the LE, the expropriation user acquires the right of possession over the immovable property expropriated on the day the decision becomes final, or on the day determined in that ruling, but not before the ruling on expropriation became final, whereas pursuant to the above mentioned Article, except on the ground of the request of the proposer who submitted the document on provided means of payment, the real estate may have been given into possession before the decision became final, if confirmed that it is necessary because of urgent situation, and against this decision an administrative contest could have been initiated."

Applicant's allegations

19. The Applicant alleges that the Supreme Court erroneously applied the material law and erroneously calculated the statute of limitations by the Supreme Court of Kosovo. He argues that:

"The main fact is that on 22.03.1989, after approving its Constitution, the former Serb regime had abolished the autonomy of Kosovo, its authorities and legal system. In such conditions when the applicable laws of Kosovo, pursuant to which the claimant's matter was processed in the procedure before the competent authority of the municipal administration, were abolished, and in the meantime the work of the authority was suspended as well, it was established a legal situation when due to discriminating legal causes, no action was taken officially in relation to the claimant's legal matter under review, and it should not be calculated as the statute of limitation. This is due to the fact that with the reorganizing of the authorities after the war, due to the change of the regime, the nature of reviewing the cases changed as well, thus the time that has passed since 22.03.1989 and beyond, including the time during and after the war until the second claim was submitted, should not be calculated in that way in the statute of limitations. If before the war there were legal obstacles installed by the discriminating regime, now due to the change of the regime they remain provisions of a totally different nature".

20. Based on what was presented in this Referral, the Applicant requests from the Constitutional Court of the Republic of Kosovo to:

"... approve the Applicant's Referral (....) that the Ruling of the Supreme Court of Kosovo, Rev. no. 118/2010 of 04.03.2013 is annulled as ungrounded and unlawful, and to return the matter to the competent body for reconsideration and retrial, or to repeat the contested procedure, based on the case file and the material evidence, submitted in this submission, which constitute integral part of this challenged matter."

Admissibility of the Referral

21. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs first to examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of the Procedure.

22. In that respect, the Court refers to Article 113.7 of the Constitution, which provides:

> *"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."*

23. The Court also refers to Article 48 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".*

24. Furthermore, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

> *„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
> ...
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."*

25. Considering the Applicant's allegations regarding the violations related to the erroneous application of the material law and erroneous way of calculation of the time limits, the Constitutional Court reiterates that it is not a court of appeal, when reviewing the decisions rendered by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1). The Judgments of the District Court in Peja Ac. no. 220/08 of 12 April 2010 and the Decision of the Supreme Court in Prishtina, Rev. no. 118.2010 of 04 March 2013, in their reasoning reason in a detailed manner and provide response to the Applicant's allegations.

26. The Constitutional Court reiterates that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

27. In the present case, the Applicant was provided numerous opportunities to present his case and challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Peja and the Supreme Court of Kosovo. After having examined the proceedings in entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

28. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to show and substantiate the allegations that his

constitutional rights and freedoms have been violated by the challenged decision.

29. Accordingly, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b), of the Rules of Procedure, on 27 March 2014, 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. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani