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

Pristina, 12 March 2013
Ref. No.: RK391/13

RESOLUTION ON INADMISSIBLITY

in

Case No. KI14/13

Applicant

Municipality of Podujeva

Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. no. 50/2011, dated 22 November 2012.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Cukalovic, 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 is submitted by the Municipality of Podujeva (hereinafter: the "Applicant"), represented by Mr. Faik Rama.

Challenged decision

2. The Applicant challenges the Supreme Court Judgment, Rev. no. 50/2011, of 22 November 2012, which was served on the Applicant on 26 December 2012.

Subject matter

3. The Applicant alleges that the abovementioned Judgment violated its rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 46 [Protection of Property], and the European Convention on Human Rights and Fundamental Freedoms (hereinafter: "ECHR"), namely Article 1 of Protocol 1 (Protection of property).

4. Furthermore, the Applicant requested to impose interim measures *"stopping the execution of Judgment Rev. no. 50/2011 of the Supreme Court because there is the risk that the claimant might request the compulsory execution of Judgment Rev. no. 50/2011 and this way cause irreparable damages to the respondent and infringe the public interest."*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 27 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 54, 55 and 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

6. On 5 February 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

7. On 25 February 2013, the President of the Constitutional Court, with Decision No.GJR.KI-14/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-14/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 26 February 2013, the Court requested Mr. Faik Rama to submit an authorization, which he submitted to the Court.

9. On 27 February 2013, the Referral was communicated to the Supreme Court.

10. On 12 March 2013, 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 facts

11. On 28 July 1980, the Legal Property Section of the Municipal Assembly of Podujeva took the Decision, No. 04-466-765/3, on expropriating the immovable property of private owners for the needs and interests of Self-governing Community of Interest (Bashkësia Vetëqeverisëse e Interesit – BVI) to construct a Cultural Centre in Podujeva. One of the expropriated properties belonged to Z. (Xh.) A.

12. On 11 August 1980, Z. (Xh.) A. complained to the Provincial Directorate for Legal Property Issues in Prishtina against the decision on expropriation.

13. On 27 October 1980, the Secretariat for Economy of the Municipal Assembly of Podujeva (Decision No. 04-360-547) allocates to Z. (Xh.) A. a two-room apartment.

14. On 27 October 1980, the General Bank in Prishtina issues a guarantee in which the Municipal Assembly of Podujeva guarantees that it has obtained the means for the expropriation of the land for the construction of the Cultural Centre.

15. On 31 October 1980, an agreement was reached between Z. (Xh.) A. and the Legal Property Section of the Municipal Assembly of Podujeva for releasing the expropriated building, allocation of a plot and premise for private activity whereas no agreement was reached on the price of the compensation.

16. On 5 November 1980, the Legal Property Section of the Municipal Assembly of Podujeva issued a conclusion on allowing the execution of the final Decision, No. 04-466-765/3, of 28 July 1980.

17. On 6 November 1980, the Legal Property Section of the Municipal Assembly of Podujeva took a decision (Decision No. 04-4784) to allow the execution of the Decision, No. 04-466-765/3, of 28 July 1980.

18. On 25 November 1980, the Legal Property Section of the Municipal Assembly of Podujeva held an oral hearing to ascertain the compensation price.

19. On 9 January 1981, the Secretariat for Economy of the Municipal Assembly of Podujeva (Decision no. 04-351-4919) approved the request of the Self-governing Community of Interest (Bashkësia Vetëqeverisëse e Interesit – BVI) to start building the Cultural Centre.

20. On 9 May 1981, the Self-governing Community of Interest (Bashkësia Vetëqeverisëse e Interesit – BVI) issued a guarantee in which it guarantees that it has the means for the investment.

21. On 21 May 1981, the Legal Property Section of the Municipal Assembly of Podujeva (Decision no. 04-466-765/3) issued a conclusion ordering Z. (Xh.) A. to release the expropriated property and move to the two-room apartment that was allocated to him. Z. (Xh.) A. complained against this decision to the Provincial Directorate for Legal Property Issues in Prishtina.

22. On 22 May 1981, the Legal Property Section of the Municipal Assembly of Podujeva (Decision no. 04-360-204) allocated a one room apartment to Z. (Xh.) A.

23. On 22 December 1982, the Provincial Directorate for Legal Property Issues in Prishtina (Decision no. 03-466-576/82) rejected as unfounded the complaint of Z. (Xh.) A. because Z. (Xh.) A. has been allocated a living place and an agreement on compensation has been reached.

24. On 4 May 1983, the Municipal Assembly of Podujeva and Z. (Xh.) A. reached an agreement whereby the Municipal Assembly of Podujeva was obliged to secure a premise for Z. (Xh.) A. for conducting business.

25. On 21 July 1995, the Municipal Assembly of Podujeva issued a decision on determining the content of the Final Rulings on the Execution, Expropriation and Taking ownership of Immovable Properties and confirmed that plots 554, 555 and 556 were carried over under ownership of the Municipality as Social Property.

26. In April 2001, the contested plots 554, 555 and 556 were registered in the name of the Self-governing Community of Interest (Bashkësia Vetëqeverisëse e Interesit – BVI) pursuant to the final decision of the Legal Property Section of the Municipal Assembly of Podujeva, Decision, No. 04-466-765/3 of 28 July 1980.

27. In 2003, the contested plots 554, 555 and 556 were registered under the ownership of the Municipality of Podujeva.

28. On 15 March 2006, the heirs of Z. (Xh.) A. filed to the Municipal Court in Podujeva a claim against the Municipality of Podujeva for confirmation of ownership over plots 554, 555 and 556 who was owner of these plots in accordance with the possession list of 2001. The heirs claimed that these plots are in an area where there is an unfinished building and the Municipality of Pudjeva is hindering their possession and use.

29. On 2 July 2007, the Municipal Court of Podujeva (Judgment C. no. 122/2006) rejected the claim of the heirs as unfounded. The Municipal Court held that:

- On 28 July 1980, the Legal Property Section of the Municipal Assembly of Podujeva took the Decision, No. 04-466-765/3, on expropriation;

- In 2001, the expropriated plots were registered in the name of the Self-governing Community of Interest (Bashkësia Vetëqeverisëse e Interesit – BVI) and in 2003 the Municipality of Podujeva was registered as owner.

Hence, the Municipal Court ruled that the claim of the heirs was unfounded. The heirs complained against this Judgment to the District Court in Prishtina.

30. On 22 October 2008, the District Court in Pristina (Decision Ac. no. 821/2007) annulled the judgment of the Municipal Court in Podujeva and sent it back for retrial. The District Court held that the Municipal Court need to confirm the following:

- Pursuant to which legal grounds was the contested immovable property in 2001 registered in under the ownership of Xh. (A) Z.
- On what legal grounds was then this immovable property registered under the ownership of the Municipality of Podujeva.
- Was the contested immovable property carried over under the ownership and use of the beneficiary of the expropriated property after the final ruling on the expropriation pursuant to the purpose of the expropriation.

31. On 24 February 2010, the Municipal Court in Podujeva (Judgment C. no. 879/2008) approved the claim of the heirs and confirmed that they were owners to the contested plots. The Municipal Court held that *"It was confirmed the fact that the purpose of the expropriation was not achieved as the construction of the House of Culture has started but it was never finished and this building has not served to the respondent for the purpose of the expropriation until now."* The Municipal Court also held that based on the testimonies of the witnesses the predecessor of the heirs was never compensated for the expropriation. The Applicant complained against this Judgment to the District Court in Prishtina.

32. On 31 January 2011, the District Court in Prishtina (Judgment Ac. no. 490/2010) approved the complaint of the Applicant and changed the Judgment of the Municipal Court giving right to the Applicant as owner of the contested plots. The District Court held that *"[...] the first instance court in conjugation to this contested matter took an erroneous stance in conjunction to the reviewing of the presented facts and thus its challenged judgment was rendered with erroneous application of the material right."* The District Court furthermore held that pursuant to *"[...] Ruling no. 04-466-765/3 of 28 July 1980 the property was expropriated and the claimants' predecessor was compensated, and the same Ruling became final on 22.12.1982 and the Cultural Centre was constructed in the abovementioned property."* The District Court also determined that the heirs had not submitted a request for de-expropriation nor annulment of the decision on expropriation. The heirs filed a request for revision to the Supreme Court against this Judgment.

33. On 22 November 2012, the Supreme Court approved the request for revision and changed the judgment of the District Court and upheld the Judgment of the Municipal Court of 24 February 2010. The Supreme Court held that *"[...] the legal stance of the first instance court was correct, because the expropriation*

ruling was rendered in 1980, whereas the decision on determining the final expropriation judgment was rendered on 21 July 1995, which means that the second instance court erroneously finds that the expropriation judgment became final on 22.12.1982. This court evaluates that the first instance court correctly determined the fact by administering the evidence - hearing the witnesses that the claimants' predecessor was not paid any compensation for the expropriated plots, because after 23 years these plots were registered as public property. In this case the relevant fact is that the respondent did not present and did not prove with any evidence that the claimants' predecessor was compensated for the expropriated property." Furthermore, the Supreme Court held that the Applicant did not submit any evidence that the expropriated property was used for the purposes that it was expropriated for.

Applicant's allegations

34. The Applicant alleges that the Supreme Court judgment and the Municipal Court judgment were taken in violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 (Protection of property) of ECHR.

Admissibility of the Referral

35. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

36. In this respect, the Court refers 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."*

37. The Court emphasizes that 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 Constitution (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).

38. In sum, the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

39. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts' factual findings with respect to its case.

40. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

41. Therefore, the Applicant did not show why and how the Supreme Court violated its rights as guaranteed by the Constitution. The Court notes that the judgments of the Supreme Court and the Municipal Court of 24 February 2010 were well argued and reasoned.

42. It follows that the Referral is inadmissible because it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

Request for Interim Measures

43. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that "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. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c), Rule 54 and Rule 56 (2) of the Rules of Procedure, on 12 March 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT his request for Interim Measures;

III. 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;

IV. This Decision is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Arta Rama-Hajrizi | Prof. Dr. Enver Hasani