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

Prishtina, 23 November 2017
Ref. No.:AGJ1154/17

JUDGMENT

in

Case no. KI93/16

Applicant

Maliq Maliqi and Skender Maliqi

Constitutional review of
Judgment Rev. no. 321/2012 of the Supreme Court of Kosovo,
of 13 November 2013

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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Maliq Maliqi and Skender Maliqi, from Prishtina (hereinafter, the Applicants).

Challenged decision

2. The Applicants challenge Judgment Rev. no. 321/2012 of the Supreme Court of Kosovo of 13 November 2013, which approved as grounded the Revision of the Counter proposer, quashed Decision Ac. No. 398/2009 of the District Court, of 17 July 2012, and Decision No. 224/2007 of the Municipal Court in Prishtina, of 28 October 2008, and remanded the case to the first instance court for retrial.

3. The challenged Judgment was served on the Applicants on 19 February 2016

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicants' rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), as well as Article 6 and Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

5. The Referral is based on Article 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

6. On 16 June 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 12 July 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.

8. On 18 July 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of it to the Supreme Court.

9. On 01 November 2016, the Basic Court in Prishtina submitted a copy of the certificate of service of the challenged Judgment.

10. On 31 March 2017, the Review Panel considered the Report of the Judge Rapporteur and recommended to the court the admissibility of the Referral.

11. On the same day, the Court deliberated on the Case. The President of the Court, pursuant to Rules 60 (1) and 44 (4) of the Rules of Procedure, replaced Judge Ivan Čukalović as Judge Rapporteur with Judge Almiro Rodrigues and appointed Judge Snezhana Botusharova as member of the Review Panel.

12. On 19 April 2017, the Court requested the Applicants to clarify which was the decision being challenged in their Referral, and to provide additional documents.

13. On 28 April 2017, the Applicants submitted additional information and documents to the Court.

14. On 04 September 2017, the Court deliberated and voted the draft Judgment proposed by the Judge Rapporteur.

Summary of facts

15. On 1 June 2004, the Department for Urbanism, Geodesy, Cadaster and Property of the Municipality of Fushë-Kosovë (Decision no. 58) expropriated cadastral parcel no. 991/1 from the predecessor of the Applicants, in order to provide land to Prishtina International Airport.

16. On an unspecified date in 2006, the Applicants, as legal heirs of their predecessor, filed with the Municipal Court of Prishtina a suit against Prishtina International Airport, JSC Sllatina (hereinafter, JSC Sllatina), requesting monetary compensation for the expropriated immovable property.

17. On 16 October 2006, the Municipal Court [N. No. 44/2005] ordered compensation to be paid by JSC Sllatina to the Applicants on behalf of the expropriation. The Municipal Court established the amount to be paid.

18. JSC Sllatina filed an appeal with the District Court in Prishtina, complaining that the amount to be paid in compensation for expropriation had not been determined in accordance with law.

19. On 21 May 2007, the District Court [Ac.No.154/07] accepted as grounded the appeal of JSC Sllatina and remanded the case to the Municipal Court for retrial. The District Court considered that the Municipal Court had not accurately determined the factual situation and ordered what follows.

> *"During the retrial, the court of the first instance should be seeking from experts of the agriculture field to consider the sale and purchase contracts that have been confirmed at the court, then what was the price per 'are' of the land sold in the vicinity of the expropriated land as well as the amount of compensation given for the expropriated lands nearby this immovable property that has been also expropriated.*
> *[...]*
> *During the retrial procedure, the court of the first instance may also order another super expert analysis, if they deem it necessary, considering the principle of fairness and awareness when deciding about the evaluation of this expropriation".*

20. On 28 October 2008, the Municipal Court [Decision N. no. 224/07] awarded a sum of money to Applicants in compensation for their expropriated immovable property.

21. JSC Sllatina again filed an appeal with the District Court, alleging *"erroneous [...] determination of the value of the parcel"*.

22. On 17 July 2012, the District Court [Decision Ac. no. 398/2009] rejected as ungrounded the appeal and upheld in its entirety the Decision of the Municipal Court.

23. The Decision of the District Court emphasized that *"the factual situation was based on the super expertise of the group of experts from the Faculty of Agriculture, which at this moment represents the most credible institution in Kosovo for the provision of such assessments"*.

24. JSC Sllatina then submitted to the Supreme Court a request for revision, claiming *"violations of the basic provisions of the contested procedure and erroneous application of the substantive law"*.

25. In the meantime, the Applicants initiated execution proceedings at the Municipal Court in Lipjan.

26. On 04 October 2012, the Municipal Court in Lipjan [E. No. 717/2012] authorized the execution of the Decision of the Municipal Court of Prishtina [N. no. 224/07] of 28 October 2008, and ordered JSC Sllatina to pay the amount specified in that decision to the Applicants in compensation for the expropriation.

27. JSC Sllatina submitted an objection to this execution decision, requesting suspension of the execution pending the decision of the Supreme Court on the request for revision.

28. On 30 November 2012, the Municipal Court in Lipjan rejected this objection as ungrounded.

29. JSC Sllatina then submitted an appeal against the execution decision.

30. On 14 June 2013, the Court of Appeals [CA.No.77/2012] rejected the appeal as ungrounded, because *"pursuant to Article 213 of the LCP the filed revision shall not stop execution"*.

31. Subsequently, on 13 November 2013, the Supreme Court [Judgment Rev. no. 321/2012] approved as grounded the revision of JSC Sllatina, annulled Decision [Ac. no. 398/2009] of the District Court of Prishtina, of 17 July 2012, and Decision [N. no.224/2007] of the Municipal Court of Prishtina, of 28 October 2008, and remanded the case to the first instance court for retrial.

32. The Judgment of the Supreme Court reads that *"the first instance court [...] has erroneously applied the provision of Article 28 of the Law on Expropriation [...]"* instead of applying *"Article 13 of the Law on Amending and Supplementing the Law on Expropriation [...]"*.

33. On 19 February 2016, the Basic Court of Prishtina held a hearing in the retrial. Then the Applicants, having become aware of the existence of the challenged

Judgment, claimed that they had never received a copy of the Judgment of the Supreme Court. The Basic Court delivered a copy of that Judgment to the Applicants.

34. Moreover, the Basic Court suspended *sine die* the examination of the case, pending additional information from JSC Sllatina. In fact, the Basic Court stated that JSC Sllatina "*is obliged, after defining the competence for representation between the Government of the Republic of Kosovo and the Air Navigation Services Agency, to inform the Court by a special submission so that the Court can proceed further*".

Applicants' allegations

35. The Applicants claim that the challenged Decision *"falls in contradiction with Article 6, paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols"*.

36. They allege that *"after 12 years they are still obstructed from receiving 'immediate and adequate' compensation for the expropriated land"*, even though *"the procedure for imposing compensation for the expropriated immovable property is urgent"*.

37. Furthermore, the Applicants allege that the Supreme Court could not make a decision on the request for revision, because *"the revision is in contradiction with Article 2(b) of the Law Amending and Supplementing the Law on Expropriation (...), which explicitly determines that 'no revision is hereby permissible against a final ruling on determination of the compensation'"*.

38. In addition, the Applicants allege that the Supreme Court of Kosovo "*directly contradicts and violates Article 46 of the Constitution of the Republic of Kosovo, by depriving* [them] *of their right to property"*, mainly because the land's expropriation, pursuant to the same Article 46 of the Constitution, must be *"followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated"*.

39. In fact, the Applicants allege that the challenged Decision *"has erroneously applied the provision of Article 28 of the Law on Expropriation [...]"*, which implies the intervention of *"the social income service"*. They state that "*the existence and functions of this organ were not determined by any laws, regulations or legal acts."*

40. Moreover, they reiterate that the challenged Decision was taken in the Revision procedure which is a *"not-legally-permitted tool"* and affects the retrial proceedings. They state that, *"if the first instance court would act in the manner that the Supreme Court has ordered it [...]"*, the Applicants would never realize the immediate and adequate compensation, "*because 'the social income service' does not exist in Kosovo and there is no subsequent authority which has undertaken this role"*.

41. The Applicants consider that the failure to determine in final instance the compensation to which they are immediately and adequately entitled for the expropriated property constitutes a violation of Article 46 of the Constitution.

42. The Applicants conclude their allegations requesting the Court to hold that the challenged Judgment *"violated Article 46, paragraph 1 of the Constitution of the Republic of Kosovo, Article 6, paragraph 1 of the European Convention, and Article 1 of Protocol No. 1 of the European Convention".*

Relevant law

43. Law on Expropriation (Official Gazette of SAPK, No. 21/78, as amended by the Law on Amendments and Supplements of Law on Expropriation, Official Gazette SAPK, no. 46/86).

> *"Article 2b.*
> *[...]*
> *The procedure for determination of compensation for expropriated real estate is an urgent procedure.*
> *Against a final decision on the determination of compensation is not permitted revision".*
>
> *Article 28 (as amended by Article 13 of the Law on Amendments and Supplements of the Law on Expropriation).*
> *[...]*
> *(2) "The market price for the expropriated agrarian land shall be determined on the basis of the data on turnover value which are provided by the social income service and the data on the amount from agreements concluded for determination of the just compensation for the expropriated land in that area".*

Admissibility of the Referral

44. In relation to the admissibility of the Referral, the Court refers to Article 46 [Admissibility] of the Law, which provides:

> *The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitution, if it determines that all legal requirements have been met.*

45. Thus, the Court first examines whether the Applicants have met the admissibility requirements established by the Constitution and further provided by the Law and foreseen by the Rules of Procedure.

46. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

> *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.

47. The Court also refers to Articles 47, 48 and 49 of the Law, which provide:

Article 47 [Individual Requests]

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

Article 48 [Accuracy of the Referral]

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.

Article 49 [Deadlines]

The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.

48. The Court further refers to Rule 36 (1) of the Rules of Procedure which foresees:

(1) The Court may consider a referral if:

(a) the referral is filed by an authorized party, or

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

(d) the referral is prima facie justified or not manifestly ill-founded.

49. In that connection, the Court notes that the Applicants claim that the Judgment of the Supreme Court violated their rights to fair and impartial trial and to protection of property guaranteed by the Constitution.

50. The Court notes that the Applicants filed the Referral on 16 June 2016, challenging the Judgment of the Supreme Court, dated 13 November 2013. However, they claim to have been served with that Judgment only on 19 February 2016. That fact was confirmed by the Basic Court of Prishtina.

51. In this regard, the Court notes that the challenged Judgment of the Supreme Court annulled the decisions of the lower instance courts, which had approved to the Applicants the compensation for the expropriated land and had ordered

the execution. In addition, the challenged Judgment remanded the case to the first instance court for retrial.

52. The Applicants state that the proceedings were remanded for retrial, *"because as a result of the erroneous application of the substantive law [these courts] failed to determine correctly and completely the factual situation, and for this reason, the decisions had to be annulled"*. Therefore, the Supreme Court could not *"accept the legal position of the lower instance courts"*.

53. The Court reiterates that the principle of subsidiarity requires that, before addressing the Constitutional Court, the Applicants must exhaust all procedural possibilities in the regular proceedings, in order to prevent violations of human rights and freedoms guaranteed by the Constitution or, if any, to remedy such a violation of rights guaranteed by the Constitution.

54. The rationale for the exhaustion rule is to afford the competent authorities, including the regular courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution. See Constitutional Court case KI41/09, *AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo,* Resolution on Inadmissibility, of 3 February 2010, § 16; see also European Court of Human Rights (hereinafter, ECtHR) case *Selmouni vs. France*, Application No. 25803/94, Judgment of 29 July 1999.

55. In that respect, the Court observes that the proceedings in the case concern exclusively the compensation to the Applicants for the expropriated property.

56. The Court reiterates that the revision filed by JSC Sllatina could not interfere in the execution ordered by the Municipal Court in Lipjan either because, *"pursuant to Article 213 of the LCP, the filed revision shall not stop execution"* (Decision CA.No.77/2012 of the Court of Appeals of 14 June 2013) or because *"no revision is hereby permissible against a final ruling on determination of the compensation"* (Article 2 (b) of the Law Amending and Supplementing the Law on Expropriation).

57. However, the Court also notes that, at the present time, the case is suspended by the Basic Court of Prishtina, without any specified deadline for it to resume.

58. In these circumstances, the Court considers that, although the case has not allegedly reached a final determination by the regular courts, the Applicants cannot reasonably be required to continue to pursue their claim for "immediate" compensation through the courts before they can submit their claim for a violation of their constitutional right to protection of property.

59. Therefore, the Court finds that such a continuation of the retrial does not constitute an effective legal remedy to be exhausted within the meaning of Article 113 (7) of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

60. In addition, the Court notes that the Applicants precisely clarify what rights have been allegedly violated by the challenged Judgment of the Supreme Court. Thus the Court considers that the Referral is justified.

61. In sum, the Court considers that the Applicants are authorized parties, have exhausted all effective legal remedies provided by law, have submitted the Referral in due time, and have accurately clarified the alleged violation of their constitutional rights.

62. The Court considers that the Applicants have met the admissibility requirements established by the Constitution and further provided by the Law and foreseen by the Rules of Procedure.

63. Therefore, pursuant to Article 46 of the Law, the Court determines that the Referral is admissible for review of its substantive legal aspects.

The substantive legal aspects of the Referral

64. The Court recalls that the Applicants claim a violation of (i) their rights to a fair and impartial trial as guaranteed by Article 31 (2) of the Constitution and Article 6 (1) of the ECHR; and (ii) their right to immediate and adequate compensation for the expropriation of their property as guaranteed by Article 46 (3) of the Constitution and Article 1 of Protocol 1 to the ECHR.

(i) Alleged violation of the right to a fair and impartial trial

65. The Court recalls Article 31 (2) of the Constitution, which establishes:

> *2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

66. The Court also recalls Article 6 (1) of the ECHR, which in its relevant parts, establishes:

> *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...].*

67. The Court notes that the Applicants mainly allege that the challenged Judgment violated their right to a fair and impartial trial, because the Supreme Court ordered the Basic Court to apply provisions of the law which allegedly cannot possibly be applied as the *'the social income service'* referred to does not exist.

68. Moreover, the Applicants claim that the challenged decision was taken in the Revision procedure which is a *"not-legally-permitted tool"* and affects the retrial proceedings. As such, that allegation concerns the assessment of the applicable law given by the Supreme Court in its Revision.

69. In fact, Article 2 (b) of the Law on Amending and Supplementing of Law on Expropriation provides:

> *The procedure for determination of compensation for expropriated real estate is an urgent procedure.*
> *Against a final decision on the determination of compensation is not permitted revision.*

70. The Court is mindful of Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that *"human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.

71. In that connection, the Court reiterates the jurisprudence of the ECtHR which held, *mutatis mutandis,* that *"its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable"*. See ECtHR case *Anheuser-Busch Inc. v. Portugal,* Application No. 73049/01, Judgment of 11 January 2007, § 83.

72. The ECtHR reiterated that standing view holding that *"while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, the role of the Court is to verify whether the effects of such interpretation are compatible with the Convention (see, mutatis mutandis, Miragall Escolano and Others v. Spain, no. 38366/97, §§ 33-39, ECHR 2000-I). Therefore, even though it has only limited power to review compliance with domestic law, the Court may draw appropriate conclusions under the Convention where it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions (see the above cited Anheuser-Busch Inc. judgment, § 83; Kuznetsov and Others v. Russia, no. 184/02, §§ 70-74 and 84, 11 January 2007; Păduraru v. Romania, no. 63252/00, § 98, ECHR 2005-... (extracts); Sovtransavto Holding v. Ukraine, no. 48553/99, §§ 79, 97 and 98, ECHR 2002-VII, Beyeler v. Italy [GC], no. 33202/96, § 108, ECHR 2000-I; and, mutatis mutandis, Tsirlis and Kouloumpas v. Greece, judgment of 29 May 1997, Reports of Judgments and Decisions 1997-III, §§ 59-63)"*. See ECtHR case *Koshoglu v. Bulgaria*, Application No. 48191/99, Judgment of 10 May 2007, § 50.

73. The Court also recalls that *"[...] the Court* [ECtHR] *will not question the interpretation* of *domestic law by the national courts, save in the event of evident arbitrariness (see, mutatis mutandis, Ādamsons v. Latvia, no. 3669/03, § 118, 24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice (see, mutatis mutandis, Farbers and Harlanova v. Latvia (dec.), no 57313/00 6 September 2001, and, albeit in the context of Article 1 of Protocol No. 1, Beyeler v. Italy [GC], no. 33202/96, § 108, ECHR 2000-I)*". See ECtHR case

Andjelković v. Serbia, Application No. 1401/08, Judgment of 9 April 2013, § 24)

74. In light of the above, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. See, mutatis mutandis, ECtHR case *García Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, § 28.

75. However, the Court notes that the challenged Judgment of the Supreme Court not only did not take into account that *"the procedure for determination of compensation for expropriated real estate is an urgent procedure";* but mainly did not pay attention to the fact that *"against a final decision on the determination of compensation is not permitted revision."*

76. The Court recalls that the Applicants explicitly allege that the Revision procedure is a *"not-legally-permitted tool"* and is preventing them to obtain their compensation.

77. The Court considers that the Law on Expropriation is neither vague nor ambiguous regarding revision; on the contrary, the Law on Expropriation specifically, clearly and directly states that the legal remedy of revision is not permitted against final decisions on the determination of compensation for expropriated real estate. Thus the Supreme Court cannot at all admit and consider such a revision.

78. The Court notes that the Supreme Court was aware of the provisions of the Law on Amendments and Supplements to the Law on Expropriation (Official Gazette SAPK no. 46/86) when pointing out to the "social income service" in cases of the determination of compensation for the expropriation of agricultural land.

79. However, the Supreme Court has neither provided any explanation as to why it applied one article of that Law, while disregarding another article of this law which excluded its jurisdiction; nor it has explained why it accepted a revision which *is not permitted* by the same law.

80. Furthermore, the Court considers that the Supreme Court entirely disregarded the urgency of the procedure for determining compensation for expropriated real estate, which is also required by the Law on Expropriation, as well as by Article 46 of the Constitution.

81. The Court also considers that the interpretation and application of the law given in the Supreme Court's Judgment in Revision is manifestly erroneous and, as such, has resulted in an arbitrary decision.

82. The Court further considers that, in these circumstances, the Applicants have been deprived of their right to fair and impartial trial under Article 31 of the

Constitution and article 6 of the ECHR, and to have the compensation for the expropriation of their land finally decided by a court.

83. Therefore, the Court finds that there has been a violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the ECHR.

(ii) Alleged violation of the right to property

84. The Court recalls that the Applicants also allege a violation of their right to protection of property under Article 46 (3) of the Constitution and Article 1 of Protocol 1 to the ECHR, because they have still not received any immediate and adequate compensation for the expropriation of their land.

85. The Court also recalls that paragraph 3 of Article 46 [Protection of Property] of the Constitution establishes:

> *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of a public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*

86. In addition, the Court refers to Article 1 of Protocol 1 to the ECHR which establishes:

> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

87. The Court reiterates that Article 1 of Protocol 1 comprises three distinct and connected rules: the first rule enunciates the principle of peaceful enjoyment of property; the second rule covers deprivation of possessions and subjects it to certain conditions; and the third rule recognizes that the State is entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose. See ECtHR cases *James, Wells and Lee v. The United Kingdom*, Applications Nos. 25119/09, 57715/09 and 57877/09, 18 September 2012; *Sargsyan v. Azerbaijan*, Application No. 40167/06, 16 June 2015; and *Belane Nagy v. Hungary*, Application No. 53080/13, 13 December 2016, § 72.

88. In that respect, the Court recalls that the ECtHR found a violation of Article 1 of Protocol No. 1, because *"the court proceedings for compensation have lasted five years so far (...), have already exceeded a reasonable time (...) and*

are continuing (...)". See ECtHR case *Guillemin v. France*, Application No. 19632/92, Judgment of 21 February 1997, § 55.

89. The ECtHR reiterated that standing view while finding violations of Article 1 of Protocol No. 1 *"in numerous cases against Bulgaria (...) on the ground of lengthy delays in the procedures, which affected the applicants' right to (...) compensation (see, for example, Lyubomir Popov v. Bulgaria, no. 69855/01, 7 January 2010; Naydenov v. Bulgaria, no. 17353/03, 26 November 2009; Vasilev and Doycheva v. Bulgaria, no. 14966/04, 31 May 2012; and Nedelcheva and Others v. Bulgaria, no. 5516/05, 28 May 2013)"*. See ECtHR case *Popov and Chonin v. Bulgaria*, Application No. 36094/08, Judgment of 17 February 2015, § 41.

90. The ECtHR further considered that *"the national authorities were responsible for* lengthy *unjustified delays"* and that *"these delays must have placed the applicants in a situation of prolonged uncertainty (see Lyubomir Popov, § 123, and Nedelcheva and Others, § 82, both cited above)"*. See *Popov and Chonin v. Bulgaria*, Ibidem, § 52.

91. The Court recalls that the Municipal Court awarded a sum of money to the Applicants in compensation for their expropriated immovable property on 28 October 2008. The District Court rejected as ungrounded the appeal of JSC Sllatina and upheld in its entirety the Decision of the Municipal Court on 17 July 2012. In accordance with Article 2 (b) of the Law on Amending and Supplementing of Law on Expropriation, allegedly a revision is not allowed against that final decision on imposing compensation

92. The Court observes that the challenged Decision of the Supreme Court approved as grounded the revision of JSC Sllatina, annulled the Decision of the District Court of 17 July 2012, and remanded the case to the first instance court for retrial.

93. However, the Court has just found that the challenged decision of the Supreme Court was not in compliance with the right to a fair and impartial trial as guaranteed by Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR.

94. Thus, the Court considers that the previous decision of the District Court [Decision Ac. no. 398/2009] of 17 July 2012, on the determination of the amount to be paid in compensation for the expropriation of their property had become final and binding and is, as such, *res judicata*, since no remedy was legally permitted to challenge that decision.

95. Consequently, the Court also considers that the execution proceedings on the basis of this District Court decision, which concluded with the Ruling of the Court of Appeals [CA. No. 77/2012] of 14 June 2013, have also become final and binding.

96. The Court notes that so far no compensation was paid for the expropriation of the Applicants' property already decided on 1 June 2004. In 2006, the Applicants initiated judicial proceedings in order to be compensated; however,

no compensation has been paid to them yet. Moreover, as a consequence of the challenged decision of the Supreme Court, the examination of the case is suspended *sine die*. Notwithstanding, *"the procedure for imposing compensation for the expropriated immovable property is urgent"* and the Constitution establishes *"the provision of immediate and adequate compensation"*.

97. Thus, the Court considers that such a delay, without payment of the compensation for the expropriation, cannot be considered to comply with the requirement of "*immediate and adequate*" within the meaning of Article 46 (3) of the Constitution.

98. Therefore, the Court finds that the Applicants are unjustly deprived of their property due to the delay in providing the immediate and adequate compensation for the expropriation of their property. Thus, the Applicants' right to the peaceful enjoyment of their property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR, has been violated.

Conclusion

99. The Court considers that the Revision No. 321/2012 of the Supreme Court of 13 November 2013 is based upon an erroneous application of the law and has consequently resulted in an arbitrary decision.

100. The Court considers that the Applicants have been denied the right to a fair and impartial trial on the determination of the compensation for the expropriation of their property, which was finally determined by the District Court [Decision Ac. no. 398/2009] of 17 July 2012.

101. Therefore, the Court finds that there has been a violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the ECHR.

102. Furthermore, the Court considers that the Applicants have been deprived of their right to immediate and adequate compensation for the expropriation of their property.

103. Therefore, the Court also finds that there has been a violation of Article 46 (3) of the Constitution, in conjunction with Article 1 of Protocol 1 to the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, in the session held on 31 March 2017,

DECIDES

I. TO DECLARE by majority the Referral admissible;

II. TO HOLD by majority that there has been a violation of Article 31 of the Constitution of the Republic of Kosovo, in conjunction with Article 6 (1) of the European Convention on Human Rights;

III. TO HOLD by majority that there has been a violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol 1 to the European Convention on Human Rights;

IV. TO DECLARE invalid the Judgment Rev. No. 321/2012 of the Supreme Court of Kosovo of 13 November 2013;

V. TO DECLARE that the Decision of the District Court [Decision Ac. no. 398/2009] of 17 July 2012, on the determination of the amount to be paid in compensation for the expropriated real estate is final and binding and, as such, is *res judicata;*

VI. TO DECLARE that the Ruling of the Court of Appeals [CA. No. 77/2012], of 14 June 2013, on execution is final and binding and, as such, is *res judicata* and executable;

VII. TO ORDER the Supreme Court of the Republic of Kosovo, the Court of Appeals and the Basic Court of Prishtina, pursuant to Article 116 (1) of the Constitution and in accordance with Rule 63 of the Rules of Procedure of the Court, to notify the Court as soon as possible, but not later than within six (6) months, regarding the measures taken to implement the Judgment of this Court;

VIII. TO REMAIN seized of the matter pending compliance with that Order;

IX. TO NOTIFY this Decision to the Applicants, the Supreme Court of the Republic of Kosovo, the Court of Appeals and the Basic Court of Prishtina;

X. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

XI. TO DECLARE this Decision effective immediately.

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

Almiro Rodrigues | Arta Rama-Hajrizi