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

Prishtina, on 7 February 2020
Ref. no.:RK 1511/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI71/19

Applicant

Avni Vula

Constitutional review of the non-enactment of the Law on Property Restitution and the Law on Treatment with Property (Official Journal of the DFY No. 36/45) as well as Amendments and Supplementation to this Law (Official Journal of FPRY No. 64/46)

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Avni Vula (hereinafter: the Applicant), from Prishtina.

Challenged decision

2. The Applicant requests the constitutional review of the obligation of the state of Kosovo for: "*The promulgation of the Law on the Property-Restitution [...] Law on Treatment of the Property Abandoned by its owners during occupation and of their property confiscated by the occupier and his helpers Off. Journal of the DFY No. 36/45*".

Subject matter

3. The subject matter is the constitutional review: (i) of the obligation of the state of Kosovo to enact the law on restitution - restitution of property; and (ii) the declaration null and void all laws, regulations, decrees and court decisions concerning property rights of the former Yugoslavia from 1945 to date.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 3 May 2019, the Applicant submitted the Referral to the Court.

6. On 10 May 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gerxhaliu-Krasniqi.

7. On 10 May 2019, the Applicant submitted an additional document identifying the Government of the Republic of Kosovo as the opposing party.

8. On 29 July 2019, the Court notified the Applicant about the registration of the Referral. On the same date, a copy of the Referral was sent to the Government of the Republic of Kosovo, namely the Office of the Prime Minister.

9. On 15 January 2020, 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

10. It follows from the documents contained in the Referral that on 30 March 2015, the Applicant addressed the Government of the Republic of Kosovo, the Ministry of Justice and the Committee on Legislation of the Assembly of Kosovo with a request for adoption of the Law on Restitution – Property Restitution and to declare invalid the laws, regulations, decrees and discriminatory decisions of the period from 09.03.1945 to the present day.

11. In 2018, the Applicant repeated his request, twice more, to the institutions of the Republic of Kosovo including the Office of the Ombudsperson, but received no response.

Applicant's allegations

12. The Applicant alleges violation of Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution in conjunction with Article 6.1 (Right to a fair trial) and Article 1 of Protocol No. 1 (Protection of property) of the ECHR.

13. The Applicant alleges: "*The enactment of the Law on Restitution of Property-Restitution was and is an OBLIGATION of this State not only with European and international Conventions and laws but also with Annex XII. Article 2-Legislative agenda setting out that in the transitional period (which has just ended) the State of Kosovo is OBLIGED to adopt this law within six months after the entry into force of this Plan*".

14. The Applicant alleges: *"The annulment of the discriminatory laws, regulations, decrees and decisions of the former YU and Serbia which have been rendered since 9. 05. 1945 to the end of the apartheid regime in Kosovo is also a DUTY not only under the Ahtisaari Plan but also an INEVITABLE OBLIGATION OF THE GOVERNMENT OF KOSOVO towards the centuries-old discriminated population of this Kosovo".*

15. The Applicant requests the Court to render the judgment, finding that: *"(i) Request of the party Avni. Q. Vula, from Prishtina, is DECLARED admissible; (ii) DECLARED NUL Law on Treatment of the Property Abandoned by its owners during occupation and of their property confiscated by the occupier and his helpers (Official Journal of the DFY No. 36/45) and amendments and supplementations to this Law (Official Journal of the FPRY No. 64/46) as a law in violation of the Constitution of the Republic of Kosovo and the ECHR; (iii) DECLARED invalid and ineffective the judgments, court decisions and other legal and administrative acts issued pursuant to the provisions of this law; (iv) The Court declares that this Judgment is effective immediately".*

Admissibility of the Referral

16. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and as further foreseen by the Law and specified by the Rules of Procedure.

17. The Court refers to Article 113.1 of the Constitution which establishes:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

18. The Court also refers to Rule 39 (1) (a) [Admissibility Criteria] of the Rules of Procedure which stipulates:

"(1) The Court may consider a referral as admissible if:

(a) the referral is filed by an authorized party".

19. In the present case, the Court notes that the Applicant essentially raises two allegations: (i) the obligation of the Kosovo institutions to enact a law on restitution - restitution of properties and (ii) the declaration null and void of all laws, regulations, decrees and court decisions on property rights of the former Yugoslavia from 1945 to the present day.

20. In view of the nature of the allegations raised by the Applicant, the Court considers that it must first examine whether the Referral was lawfully submitted by an authorized party as stipulated by Article 113.1 of the Constitution.

21. The Court notes that based on Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, the ECHR is directly applicable in the Republic of Kosovo, and based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the human rights and fundamental freedoms must be interpreted in accordance with the judgments of the European Court of Human Rights (hereinafter: the ECtHR).

22. The Court notes that Article 79 [Legislative Initiative] of the Constitution establishes: *"The initiative to propose laws may be taken by the President of the Republic of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law".*

23. In this regard, the Court reiterates that the Constitution of Kosovo does not provide for an *actio popularis*, meaning that individuals cannot complain in abstract or challenge directly actions or failure to act by public authorities. The Constitution of Kosovo provides recourse to individuals regarding actions or failure to act by public authorities only within the scope provided by Articles 113.1 and 113.7 of the Constitution, which requires the Applicants to show that they are: (1) authorized parties, (2) directly affected by a concrete act or failure to act by public authorities, and (3) that they have exhausted all legal remedies provided by law. (see Case No. KI39/11, *Applicant Tomë Krasniqi*, Resolution in Inadmissibility of the Constitutional Court, of 30 January 2013, paragraph 40 and the references cited therein).

24. The Court will further refer to the main decisions of the ECtHR in which were discussed the issue of property restitution, the applicability of the safeguards of Article 1 of Protocol No. 1 to the ECHR in respect of the restitution of property, and the obligations which the Member States of the Council of Europe (hereinafter: the Contracting States) have in this respect (See, among other authorities, ECtHR Judgment of 4 March 2003, *Jantner v. Slovakia*, No. 39050/97, paragraph 34; Judgment of the ECtHR [GC], of 10 July 2002, *Gratzinger and Gratzingerova v. the Czech Republic*, No. 39794/98, paragraphs 70-74).

25. The Court notes that in the abovementioned ECtHR decisions, in the specific paragraphs cited above, *inter alia*, it is stated that Article 1 of Protocol No. 1 of

the ECHR cannot be interpreted as imposing any restrictions on the Contracting States to restore property which had been transferred to them before they ratified the ECHR. This is the first basic principle. This article cannot also be interpreted as restricting the freedom of the Contracting States to determine the scope of property restitution or the choice of conditions under which property restitution will be made to their former owners. This is the second basic principle. (See ECtHR Judgment, *Jantner v. Slovakia*, cited above, paragraph 34).

26. The ECtHR case law further shows that, in particular, the Contracting States enjoy a wide margin of appreciation with respect to the exclusion of certain categories of former owners from such a right. Where certain categories of owners are thus excluded, their claims for restitution cannot be regarded as constituting a legitimate expectation, which thus attracts the protection of Article 1 of Protocol no. 1 of the ECHR. This is the third important principle. (See ECHR Judgment [GC], of 10 July 2002, *Gratzinger and Gratzingerova v. the Czech Republic*, No. 39794/98, paragraphs 70-74). On the other hand, as the fourth basic principle, it is important to emphasize that, once a Contracting State which has ratified the ECHR, including Protocol no. 1, issues a law on the basis of which it envisions the total or partial restitution of property confiscated from a past regime, then such legislation is considered as a law which generates a new property right which is protected, in this case, from Article 1 of Protocol no. 1 of the ECHR, for all those persons who meet the requirements laid down by that law (see ECtHR decisions cited above and see also, *mutatis mutandis*, Constitutional Court, Case No. KI78/18, Applicant *Pashk Malota*, Resolution on Inadmissibility, of 10 April 2019, paragraph 51).

27. From the foregoing, the Court notes that the ECHR and the case law of the ECtHR: (i) does not oblige the Contracting States to issue a Law on Restitution of Property; (ii) allows the Contracting States considerable freedom in the establishment and determination of the scope of the restitution of property and the choice of the conditions applicable to it; (iii) enables the Contracting States to define and/or exclude certain categories from the right to property restitution; and (iv) obliges the Contracting States to respect the right to protection of property guaranteed by Article 1 of Protocol No. 1 of the ECHR, if they have decided to issue a law on restitution of property, as in such cases the protection by this article is a right guaranteed by the ECHR. These are the four general principles regarding the issue of "restitution of property", based on the ECHR and the case law of the ECtHR, already consolidated in this regard (see, *mutatis mutandis*, Case No. KI78/18, *Applicant Pashk Malota*, cited above, paragraph 52).

28. In the present case, the Court notes that there is no special law in the Republic of Kosovo on the property restitution and, consequently, the claims for restitution of property cannot be based on the guarantees provided by Article 1 of Protocol no. 1 of the ECHR or, *mutatis mutandis*, in the safeguards of Article 46 [Protection of Property] of the Constitution. This is, as explained above, for the sole reason that the property restitution claims cannot be considered to constitute a "legitimate expectation" as long as there is no law on property restitution (see Case No. KI78/18, *Applicant Pashk Malota*, cited above, paragraph 53).

29. The Court recalls that the mere mention of articles of the Constitution and the ECHR is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must present reasoned allegations and compelling arguments (see, *mutatis mutandis*, the Constitutional Court Case No. KI136/14, Applicant *Abdullah Bajqinca,* Resolution on Inadmissibility of 10 February 2015, paragraph 33).

30. As to the allegations of declaring null and void the laws, regulations, decrees and the court decisions concerning property rights from 1945 to the present day, the Court considers that it is a well-known fact that the institutions of the Republic of Kosovo has adopted laws to supplement the legal framework on property rights but also on other issues that regulate the rights and obligations of individuals in the Republic of Kosovo.

31. The aforementioned allegation is confusing and that it is objectively impossible for the Court to understand the Applicant's complaints in this regard.

32. Therefore, the Referral is on constitutional basis inadmissible, because it has not been lawfully submitted by an authorized party, as established in Article 113.1 of the Constitution and is further specified by Rule 39 (1) (a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 of the Constitution, Article 22 of the Law and Rule 39 (1) (a) of the Rules of Procedure, on 15 January 2020, 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**

Remzije Istrefi-Peci

Kopje e vërtetuar
Overena kopija
Certified Copy

Arta Rama-Hajrizi

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