



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 14 May 2020  
Ref. no.:RK 1561/20

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## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI225/19**

Applicant

**Kadri Bullut**

**Constitutional review of Decision AC-I-17-0250-A0001 of the Appellate  
Panel of the Special Chamber of the Supreme Court of Kosovo on  
Privatization Agency of Kosovo Related Matters, of 12 September 2019**

### **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 Kadri Bullut, residing in Prizren (hereinafter: the Applicant).

## **Challenged Decision**

2. The Applicant challenges the decision AC-I-17-0250-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), of 12 September 2019.

## **Legal Basis**

3. The subject matter of the Referral is the constitutional review of the challenged decision which, as alleged by the Applicant has violated his rights guaranteed by Articles 46 [Protection of Property], 102 [General Principles of the Judicial System] of the Constitution of Republic of Kosovo (hereinafter: the Constitution), as well as Articles 6 [Right to a fair trial], 13 [Right to an effective remedy] and 14 [Prohibition of discrimination], of the European Convention on Human Rights (hereinafter: the ECHR).

## **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), as well as 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 Constitutional Court**

5. On 16 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 December 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of judges: Gresa Caka Nimani (presiding), Bajram Ljatifi and Safet Hoxha (members).
7. On 30 December 2019, the Court notified the applicant about the registration of the Referral and sent a copy thereof to the Appellate Panel of the SCSC.
8. On 29 April 2020 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. On the basis of the enclosed documentation, the Applicant had been an employee of the enterprise SOE. IFS\PROGRES-SUPRALLON in Prizren.
10. On 3 July 1998, the said company had decided to allocate to the Applicant the apartment of 72.28 m<sup>2</sup>, (upon his request), at the address 'Revolucioni i Tetorit', llam. 2 E no.8, in Prizren.



11. According to the case file, we note that in 1999, the Applicant was evicted from the apartment by the government of that time and another person (of Serbian ethnicity, who also had legal claims on that apartment) moved into that apartment. Following the end of the war, the applicant had moved back into his apartment. But after a short time, according to the Applicant, he was forced to leave the apartment again as a consequence of pressure, and the apartment was again usurped by another person.
12. On an unspecified date, the Applicant addressed the Privatization Agency of Kosovo (hereinafter: PAK), with a request to be granted the right to purchase the apartment on the basis of the residential right.
13. On 11 June 2013, the Board of Directors of the PAK, by decision no. 1704, rejected the request for the purchase of the apartment submitted by the Applicant.
14. On 27 July 2013 the Applicant filed a claim with the Special Chamber of the Supreme Court (hereinafter: the SCSC), against the PAK decision [no.1704], of 11 June 2013.
15. In the hearing held at the Specialized Panel of the SCSC, the representative of the PAK objected to the claimant's claim, arguing that the PAK had rejected the claimant's request to purchase the apartment, because he had submitted such a request to the Habitat, as well. Moreover, according to the PAK, the Applicant did not meet the legal criteria that would allow him to purchase the apartment, namely he did not possess the contract for the lawful use and possession of the apartment.
16. On 25 April 2017 the Specialized Panel of the SCSC, by Judgment C-II-13-0299-C0001, approved the Applicant's claim and decided that (i) to annul the decision of the Board of Directors of PAK [no. 1704] of 11 June 2013, and grant to the Applicant the right to purchase the apartment; (ii) the PAK is ordered to enter into a contract with the buyer, namely the complainant in this case, within 3 months from the moment of the Judgment becoming final; (iii) if the PAK as a seller, in this case, despite the buyer's request refuses or does not enter into a contract within the prescribed deadline the buyer acquires the right to request from the competent Court in a non-contested procedure to have issued a decision which replaces the contract; (iv) the subject matter jurisdiction for the decision that replaces the contract on sale between the holder of the residential right and the PAK in case of rejection or non-activation by the seller, pursuant to Article 7.4 of the Law no.04 / L-061 pertains to the Basic Court competent in a out-contentious procedure".
17. In this Judgment, the Specialized Panel of the SCSC reasoned, among other things, that: *"The claimant has a contract for the merger of funds for the construction of the apartment block of which this apartment has been a part. According to the law in force of 1997, this apartment was allocated to the plaintiff by decision [...] it is essential for this case, that the fact that the person to whom such a decision for allocation of the apartment was issued was not forced to enter into another contract with the BVI(Self-Governing Community of Interest)."*

18. On 27 May 2017, the PAK filed an appeal with the Appellate Panel of the SCSC against the Judgment C-II-13-0299-C0001 of the Specialized Panel of the SCSC, of 25 April 2017, alleging substantial violations of the provisions of the contested procedure and due to the erroneous and incomplete determination of the factual situation.
19. On 12 September 2019, the Appellate Panel of the SCSC, by the Judgment AC-I-17-0250-A0001, approved the PAK's appeal as founded, and amended the Judgment [C-II-13-0299-C0001] of the SCSC, of 25 April 2017 as well as dismissed the claimant's claim as inadmissible.
20. In the reasoning of this Decision, it was emphasized that: *"[...] the assessment of the Specialized College regarding discrimination is not founded and is in contradiction with the evidence contained in the case file and the determined factual situation. The Appellate Panel, among other things, considers that this case had already been decided by Habitat and the decisions are already final [...] the cases decided by the former Habitat should be treated as adjudicated cases. This matter has been confirmed also by the Constitutional Court of the Republic of Kosovo by the Judgment Ref. KI 104/10."*

### **Applicant's allegations**

21. The Applicant alleges that the Appellate Panel of the SCSC, by Decision AC-I-17-0250-A001, of 12 September 2019, has violated his rights protected by Articles 46 and 102 of the Constitution, as well as Articles 6, 13 and 14 of the ECHR.
22. The Applicant claims that the Appellate Panel of the SCSC did not take into account that he had been evicted from his apartment through forcible measures and that "on the basis of the evidence and their administration it can easily be concluded that at that time this apartment was offered to a Serbian citizen, whereas he was forcibly evicted from his apartment with no documents and single justification". In this respect, he states that "The Constitutional Court should make an analogy of this case by taking into account that in July 1990 the then forcible government promulgated the Law on Labour Relationships under special circumstances, as a consequence of which afterwards thousands of Kosovo workers were dismissed from work". He also claims that even after the war (in 1999) he was forced to leave the apartment due to pressure and then another person moved in.
23. According to the Applicant, the Decision of the Appellate Panel of the SCSC is *"an incomprehensible and illegal decision whereby I have been deprived of a fundamental right, the right to property and residence; therefore considering the decision taken we claim that all provisions of the legal acts and national and international instruments relating to the ownership and residence, have been violated"*.
24. The Applicant further alleges that he has been subject to discrimination and injustice because he was deprived of his right *"to enter into negotiations on the sale of the apartment"*.



25. Finally, the Applicant addresses the Court with the following request:

*“[...] to have his referral approved and the Decision no.AC-I.-17-0250-A0001 of the Appellate Panel of the SCSC to be declared unconstitutional.”*

### **Admissibility of the Referral**

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

27. In this respect, the Court initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*“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”.*

28. The Court further refers to Articles 47[Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which determine:

#### Article 47 [Individual Requests]

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*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... [...]”*

29. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; who is challenging an act of a public authority, namely the Decision AC-I.-17-0250-A0001 of the Appellate Panel of the SCSC, of 12 September 2019; has specified the rights and freedoms which he claims to have been violated; has exhausted all legal remedies provided by law, and has submitted the Referral within the set legal deadline.
30. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [ Admissibility Criteria] of the Rules of Procedure, which in paragraph 2 stipulates that:
- “(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*
31. The Court draws the attention to the Applicant’s main argument that the Appellate Panel of the SCSC did not take into account the fact that he had been forcibly evicted from his apartment even though he had been given an apartment by the company in which he had worked.
32. The Court finds that, in essence, all the Applicant's allegations relate mainly to the violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, violation of Article 46 of the Constitution, in conjunction with Article 1 of the Protocol. 1 of the ECHR, as well as violation of Article 24 of the Constitution, in conjunction with Article 14 of the ECHR.

**Allegations for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR**

33. In this respect, the Court notes that, in essence, the Applicant complains that in his case the Appellate Panel of the SCSC has failed to not correctly establish the factual situation, because it had not taken into account the fact that he had been forcibly evicted from the apartment, without any documents and single justification.
34. With regard to the above allegations, the Court considers that the Applicant has built his case on grounds of legality, namely on the erroneous determination of the factual situation as regards his removal from the apartment, as well as the erroneous interpretation of the law by the Appellate Panel of the SCSC, including PAK as an administrative body that initially rejected his request for the purchase of apartment.
35. The Court recalls that these allegations relate to the manner in which the PAK and the Appellate Panel of the SCSC have ascertained the facts of the case and made the relevant legal interpretations. As such, those allegations fall within the domain of legality and, in principle, do not fall within the jurisdiction of the Constitutional Court (See, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35).
36. In this regard, the Court emphasizes its general position that it is not its duty to deal with errors of fact and law allegedly committed by the regular courts



(legality), unless and insofar as they may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a “fourth instance” court, which would result in exceeding the limits imposed on its jurisdiction. In line with its already consolidated case law, the Court reiterates that it is the role of regular courts to interpret and apply the pertinent rules of procedural and substantive law and that the Constitutional Court cannot carry out assessments as to why a regular court has decided in a certain way rather than in another (See case: KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

37. The Constitutional Court can only examine whether the evidence have been presented in a fair manner in a judicial proceeding and whether the proceedings as a whole, have been conducted in such a way that the Applicant had a fair trial (See, among other authorities, the decisions of the Constitutional Court in the cases: KI13/19, KI70/11; KI06/17; KI172/18).
38. On the basis of the case file, the Court notes that the reasoning provided in the Decision of the Appellate Panel of the SCSC is clear and after reviewing all proceedings, the Court also found that the proceedings before the Appellate Panel of the DHPGJS were not unfair or arbitrary.
39. The Court notes that the Appellate Panel of the SCSC rejected the Applicant's claim as inadmissible and confirmed the PAK's appeal as founded, whilst the decision of the SCSC was amended because the case had already been decided by the Habitat and the decision is final.
40. Thus, the Appellate Panel of the SCSC, in its decision, had stated the following:

*“The Appellate Panel, among other things, notes that this matter has already been decided by the Habitat and the decisions are already final. The Appellate Panel considers that cases decided by the former Habitat should be treated as decided or adjudicated. This matter has been confirmed also by the Constitutional Court of the Republic of Kosovo with the Judgment Ref. KI104/10 dated 23 April 2012 in which similar cases relating to residential disputes have been decided. The Constitutional Court found that the final decisions of the Housing and Property Claims Commission (Habitat), pursuant to Article 2.5 of UNMIK Regulation 1999/23, are binding and are not subject to review by any other judicial or administrative body in Kosovo.”*

41. Moreover, the Court based on the case file notes that in the response of the Kosovo Property Agency to the PAK, it is stated that the Property Agency has decided on the property that is the subject of the dispute, by Decision HPCC/D204/2005 of 18 June 2005. That decision rejected the Applicant's request, and was thereupon confirmed by the Appeals Commission by Decision HPCC/REC/61/2006, which was final and pursuant to Article 2, paragraph 5 of UNMIK Regulation 1999/23 was not subject to review by any court or administrative body in Kosovo.

42. In this respect, the Court further considers that the Applicant has not proved that the proceedings before the Appellate Panel of the SCSC were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated as a result of the erroneous interpretation of the procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality (See, *mutatis mutandis*, cases: KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, paragraph 44; KI150/15; KI161/15; KI162/15; KI14 /16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility, of 15 November 2016, paragraph 62).

### **Allegations for violation of Article 46 of the Constitution**

43. The Court notes that the Applicant, as the main argument for the violation of Article 46 of the Constitution, points out the fact that the Appellate Panel of the SCSC has rendered an incomprehensible decision and consequently, he has not acquired the right to purchase the apartment.
44. When examining whether there was a violation of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, the Court must first determine whether the Applicant possesses “property” within the meaning of Article 46 of the Constitution and Article 1 of Protocol No. 1. 1 of the ECHR.
45. In this regard, the Court emphasizes that, according to the consistent case law of the ECtHR and the Constitutional Court, “property” within the meaning of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR may be either “existing possessions” or “possessions”, including claims in respect of which a person has at least “legitimate expectation” that they will be realised (see the ECtHR Judgment, *Jantner v. Slovakia*, of March 4, 2003, number 39050/97).
46. In this case, the Court emphasizes that the “legitimate expectation” must be much more concrete than a mere hope, however understandable that hope may be, and be based on a legal provision or legal act, such as a judicial decision (See, the ECtHR Judgment, *Kopecký v. Slovakia*, Application number 44912/98 of 28 September 2004, para.48-49;).
47. Referring to the above-mentioned principles relating to the concrete case, the Court notes that the Appellate Panel of the SCSC had treated exclusively the requests raised by the claimant by a claim for the determination of the property right.
48. Based on the foregoing, the Court considers that the Applicant could not have had a “legitimate expectation” that the Appellate Panel of the SCSC would issue a decision regarding the right to purchase the apartment, since his case was decided by the Kosovo Property Agency - Appeals Commission, by decision HPCC/REC/61/2006, which decision was final. As such, pursuant to Article 2, paragraph 5 of the UNMIK Regulation 1999/23 it cannot be subject to review by any court or administrative body in Kosovo.



49. Consequently, since “legitimate expectation” must be based on a legal provision or a certain legal act, the Court considers that the Applicant has not proved that he has a “feasible claim” which would constitute “property” within the meaning of Article 1 of Protocol No. 1 of the ECHR.
50. Therefore, the Court finds that there is no violation of the right to property under Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

**Allegations for violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR**

51. The Court notes that the Applicant considers that he has been discriminated by the challenged decision of the Appellate Panel of the SCSC, after “*being deprived of the right to enter into negotiations on the sale of the apartment*”.
52. The Court first of all would like to recall that, as a general rule, equality before the law implies equal treatment of individuals under the same or similar conditions and circumstances, including their right to equal protection by the law. However, equality before the law does not mean that for an individual or a category of persons, who are under objectively different conditions, there will be a same treatment and solution.
53. Moreover, the ECtHR case law clarifies that, within the meaning of Article 14 of the European Convention on Human Rights (ECHR), discriminatory treatment is considered only when “it has no objective and reasonable justification”, which means that, it does not pursue a “legitimate aim”, or when the treatment does not have a reasonable relationship of proportionality “between the means employed and the aim sought to be realized (see, for example, the trial of 28 May 1985 in the case *Abdulaziz, Cabales and Balkandali v. the Kingdom. United*, Series A, no. 94, para.78).
54. From this point of view, the Court considers that the decision of the Appellate Panel of the SCSC does not contain elements of breach of equality before the law, respectively elements of unequal treatment, as alleged by the Applicant. Moreover, none of the required grounds of Article 24 of the Constitution, when this article is interpreted in the light of Article 14 of the Convention, support the claimant’s allegation for violation of this fundamental right, because he does not prove and argue in any way that the regular courts have treated him in unequal and discriminatory way (see, inter alia, the case of the Court KI173 /18, Applicant *Nijazi Pasoma*, Resolution on Inadmissibility of 22 July 2019, paragraph 32).
55. In the end, the Court notes that the Applicant alleges a violation of Article 102 of the Constitution and Article 13 of the ECHR, but he has failed to argue or justify these allegations. Moreover, the Court notes that the allegation for a violation of Article 102 may be raised in an argumentative manner by individual applicants, only in connection with any specific right guaranteed by Chapters II and III of the Constitution. Therefore, this article cannot be applied independently if the facts of the case do not fall within the scope of at least one or more of the provisions of the Constitution concerning “the enjoyment of human rights and freedoms” (see, the case KI 67/16, Applicant *Lumturije Voca*,

Resolution on Inadmissibility, of 23 January 2017, para.128; KI172/18, Applicant Arbër Kryeziu, owner of “Al-Petrol” Sh.pk, Resolution on Inadmissibility, of 20 January 2020, paragraph 65).

56. The Court emphasizes that the mere fact that the Applicant is not satisfied with the outcome of the decision of the Appellate Panel of the SCSC, or only the mention of the articles of the Constitution, is not sufficient to build an allegation for a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments (See, in this context, the cases of the Court: KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33; KI68 / 17, *Hysni Bytyqi*, Resolution on Inadmissibility of 4 June 2018, paragraph 32; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 51).
57. Consequently, taking into account the allegations raised by the Applicant and the facts presented by him, the Court, by relying on the standards set in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not sufficiently proved and substantiated his allegations for violation of his fundamental rights and freedoms guaranteed by the Constitution and the ECHR.
58. Therefore, pursuant to Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, consequently, it must be declared inadmissible.



## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 29 April 2020, unanimously

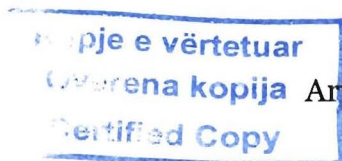
## **DECIDES**

- 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**

Bekim Sejdiu



Arta Rama-Hajrizi

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