



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 14 May 2020
Ref. No.: RK 1563/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI241/19

Applicant

Sali Krasniqi

**Constitutional review of Decision AC-I-19-0158-A0018, of the Appellate
Panel of the Special Chamber of the Supreme Court on Privatization
Agency of Kosovo Related Matters, of 17 October 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 Sali Krasniqi from the village of Zajmovë, Municipality of Klina (hereinafter: the Applicant). The Applicant is represented by Ekrem Agushi, a lawyer from Prishtina.

Challenged Decision

2. The Applicant challenges the Decision AC-I-19-0158-A018, 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 17 October 2019, whereby was rejected his request for revision, filed against Judgment AC-I-13-0019-A0018 of the Appellate Panel of the SCSC, of 15 August 2019 and Judgment SCC-08-0287 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel of the SCSC) of 23 January 2013.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decision of the Appellate Panel of the SCSC, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 24 [Equality before the Law] and Article 31 [Right to Fair and Impartial trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) and Article 1 of Protocol 1 (Protection of property) of the European Convention on Human Rights (hereinafter: ECHR).

Legal Basis

4. The Referral is based on Article 113.7 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 Constitutional Court

5. On 26 December 2019 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 December 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of Judges: Radomir Laban (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
7. On 20 January 2020 the Court notified the Applicant's legal representative about the registration of the Referral and sent a copy thereof to the Appellate Panel of the SCSC.
8. On 15 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 case file it results that the Referral concerns a dispute over several parcels of land, for which the Applicant claims to have bought in 1974, on the basis of an oral contract, from B. T. LJ. As a result, although the Applicant alleges to have fulfilled the contractual obligation to the seller, the ownership right over the said property was never transferred to the Applicant. In 1982, the parcels in question were expropriated on the basis of a decision of the Municipal Assembly of Klina (from the seller B.LJ.) and became the property of two socially-owned enterprises.
10. On 24 May 2005, the Applicant filed a claim with the Municipal Court in Klina against the respondent, DP GRO "Kosovo" in Vushtrri-OOOR "Beli Drim" (socially owned enterprise) in Volujakë (Klina), claiming that on the basis of the sale contract he has acquired the ownership right over the cadastral units no. 211/3, 213/3 and 219/5, in the area of 0.91,71 ha, recorded in the possession list no. 179, CZ Novo Sellë. The claimant also sought the annulment of the decision on the expropriation of the aforementioned parcels from 1982 taken by the Municipal Assembly of Klina, Directorate for Economy, Municipal- Housing and Property Affairs.
11. On 14 November 2008, the Applicant filed a claim on the same matter with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: SCSC), seeking *„to be confirmed that he he is the owner of parcels under no. 221/3, 213/3 and 219/5, with a total area of 0.91,71 ha. Which have been registered in the possession list as the property of enterprise SOE GRO Kosovo, SOE OOUR Beli Drim, and SOE Mirusha (hereinafter: the respondent)“*.
12. As the legal basis for the acquisition of ownership rights, the Applicant in his claim stated that *“he had acquired the ownership right on the basis of a sale contract concluded in 1974 with the former owner B.LJ, but that the transfer of ownership to him was not carried out due to high fees and the discriminatory law of Serbia. Moreover, he also had acquired the ownership of the property through its maintenance“*.
13. The Privatization Agency of Kosovo (PAK) responded to the Applicant's claim, stating that there was no evidence to support the sale of the property in question and that the contract on sale of the disputed property was not concluded in writing, as is prescribed by Article 9 of the Law on Circulation of Land and Buildings (Official Gazette of SFRY No. 43/65).
14. On 23 January 2013, the Specialized Panel of the SCSC rendered the Judgment SCC-08-0287, whereby it rejected as unfounded, the Applicant's statement of claim, by reasoning that:

„The court found that the claimant had not established that he had acquired the ownership of the said cadastral parcels under no. 211/3, 213/3 and 219/5, in the total area of 0.91,71 ha, CZ Novo Sellë Zajm, since the contract has not been concluded in writing and therefore each contract concluded

orally is null and void. Therefore, the Court rejected the claim as unfounded.“

„The claimant cannot claim ownership through maintenance since the claimant cannot be considered a conscientious holder during this appropriation for two reasons: first, he should have known that the written form was a mandatory condition for the transfer of immovable property since it was a common and well known fact. Secondly, the claimant was aware of this since the reasons for not concluding the contract in writing were 'high fees and discriminatory Serbian law', as emphasized by him in his claim filed on 14 November 2008.“

15. The Applicant filed an appeal with the Appellate Chamber of the SCSC against the Judgment SCC-08-0287 of the Specialized Panel of the SCSC, alleging erroneous determination of factual situation and erroneous application of the law.
16. On 15 August 2019, the Appellate Panel of the SCSC rendered the Judgment AC-I-13-0019-A0018, rejecting the Applicant's appeal as unfounded and confirming the judgment of the SCSC Specialized Panel (SCC-08-0287).
17. In this judgment, the Appellate Panel of the SCSC argued, inter alia, that: *“In the present case, the contract on the sale of property was concluded only orally between the claimant and Lj. T. B. in 1974. According to Article 9 of the Law on Circulation of Land and Buildings (Official Gazette - SFRY No. 43/65) which was in force during that period, a written form for the transfer of land is explicitly required, otherwise the contract will not produce any legal effect [...] Also, the claimant could not obtain ownership through the maintenance, because the claimant could not be considered a conscientious holder [...]”*.
18. The Applicant filed a request for revision with the Appellate Panel of the SCSC against the above judgment, stating that the Appellate Panel, pursuant to Article 14, paragraph 2 of the Law 04/L-033 on the Special Chamber, should ascertain that during the court proceedings there has occurred an erroneous application of substantive law, hence it is obliged to re-examine the facts on which occasion it will apply *“mutatis mutandis the relevant provisions of the Law on Contested Procedure”*.
19. On 17 October 2019, the Appellate Panel of the SCSC issued the Decision AC-I-19-0158-A0018, rejecting the Applicant's request for revision as inadmissible, stating that: *„ The parties, pursuant to Article 9.15. of the Law on the Special Chamber, have no regular or extraordinary legal remedies at their disposal to challenge a final decision of the Appellate Panel“*.

Applicant's allegations

20. The Applicant alleges that *“The Specialized Panel of the SCSC and the Appellate Panel of the SCSC in their court decisions, by not recognizing the claimant's property right over the disputed immovable property which he acquired in the 1974 by the contract on sale, have violated Articles 24 and 31 of the Constitution, as well as Article 6. and Article 1 of Protocol 1 to the ECHR”*.

21. In this sense, the Applicant alleges that he has concluded an oral agreement with the then owner of the disputable property and that he has fulfilled his contractual obligation by paying the entire sum of money for which they had agreed in the contract. However, in 1982, the said property was expropriated, and was subsequently registered in the cadastral records as the property of the socially owned enterprise/s „DP GRO Kosovo“, „DP OOUR Beli Drim“ and „DP Mirusha“. The Applicant further argues that, even though the expropriation process has been completed in the formal and legal aspect, he remained the unhindered factual holder of the parcels in question.
22. The Applicant argues that the seller (former owner) of the parcels in question (person B.T.LJ.), in the hearing held in 1982 at the Municipal Assembly of Klina, has confirmed that he had sold the expropriated parcels to the Applicant in 1974 but that they did not make a written contract in that regard, nor did they certify it at the court. The Applicant enclosed a document from the said hearing held in 1982 at the Municipal Assembly of Klina in support of his allegation that B.T.LJ. admitted that he had sold the parcels in question to the Applicant and that both parties had fulfilled their contractual obligations.
23. Moreover, the Applicant states that *“[...] the seller, as the former owner, has never been served the decision of the Municipal Assembly of Klina [...] of 1982 on the expropriation of the disputable property and [...] no compensation – payment was made for the expropriated property to the former owner B.T.Lj and to the claimant Sali Krasniqa, as the buyer [...]”*.
24. Further, the Applicant states that, pursuant to Article 20, paragraph 2 of the Law on the Basic Property Relationships (LBPR) in conjunction with Articles 73, 11 and 12 of the LOR, he has a legal basis for the acquisition of ownership and thus he has the legitimacy to seek recognition of the property rights over the disputable property in court proceedings against the respondents.
25. The Applicant addresses the Court with a request to accept the Referral as well founded and quash the judgments of the Specialized Panel of the SCSC and the Appellate Panel of the SCSC.

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 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. In the following, the Court also refers to the admissibility requirements as specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accuracy of the Referral], and 49[Deadlines] which provide:

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. In addition, the Court should consider whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 (Admissibility Criteria) of the Rules of Procedure.

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

[...]

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

c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant."

30. In the light of the foregoing, the Court first emphasizes the Applicant's substantive allegation that the decisions of the two instances (panels) of SCSC, which did not recognize the Applicant's property rights over the disputable property, have violated Articles 24 and 31 of the Constitution, as well as Article 6 and Article 1 of Protocol 1 of the ECHR.

31. The Court notes that the Applicant first filed a claim with the Municipal Court of Klina regarding the case in question. On the basis of the case file it is not possible to determine what the epilogue of that claim was (filed with the Klina Municipal Court of Klina). Moreover, the Applicant did not make any allegations regarding this proceedings. Having in mind these facts, the Court concludes that it will not deal with this part of the proceedings.
32. The Court also notes that the SCSC conducted proceedings on the merits of the applicant's claim, wherein was also examined the issue of the property in question. The Court finds that this trial was concluded with the final Judgment AC-I-13-0019-A0018 of the Appellate Panel, of 15 August 2019.
33. The Court also points out that the Applicant filed a request for revision with the Appellate Panel of the SCSC precisely against the final judgment rendered by the Appellate Panel on 15 August 2019.
34. In this regard, the Court refers to the decision of the Appellate Panel of the SCSC AC-I-19-0158-A0018 of 17 October 2019, issued upon the Applicant's request for revision, which stated that *„pursuant to Article 10 paragraph 14 of the Law No. 04/L-033 on the Special Chamber [...], all judgments and decisions of the Appellate Panel of the SCSC [...] are final and are not subject to any further appeal, that is, the parties, in the proceedings pursuant to Article 9.15. of the Law No.04/L-033 on the Special Chamber, have no regular or extraordinary legal remedies available to challenge the final decision of the Appellate Panel“*.
35. The Court notes that in the aforementioned judgment, the Appellate Panel also refers to the case-law of the Constitutional Court, in similar cases, namely the cases: KI103/12; KI57/13; KI23/14.
36. In this respect, the Court draws attention to its case-law in which it has established: *„It is quite clear that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court“* (see decision in Case KI02/15, Applicant *Social, Sports, Cultural, and Economic Centre „Pallati i Rinise“*, Resolution on Inadmissibility of 18 May 2015, paragraph 29).
37. The Court recalls that upon receipt of the Judgment AC-I-13-0019-A0018 of the Appellate Panel of the SCSC, of 15 August 2019, there was nothing that prevented the Applicant from addressing the Constitutional Court. However, he used a remedy in the form of a revision, which as such was not prescribed by the law.
38. Accordingly, the Court finds that the “last decision” in the present case under Article 49 of the Law is the Judgment AC-I-13-0019-A0018 of the Appellate Panel of the SCSC, of 15 August 2019, which dismissed the Applicant's appeal filed against the Judgment SCC-08-0287 of the Specialized Panel of the SCSC, of 23 January 2013. Consequently, this judgment constitutes a final decision against which no appeal, revision or other remedy can be filed (see the Case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility, of 26

December 2017, and, *mutatis mutandis*, the EctHR Case, *Fernie v. the United Kingdom*, No. 14881/04, decision of 5 January 2006).

39. In this regard, the Court finds that the Judgment AC-I-13-0019-A0018 of the Appellate Panel of the SCSC, of 15 August 2019 was served on the Applicant, according to him, on 20 August 2019, while the Referral was submitted to the Constitutional Court on 26 December 2019. On this basis it can be established that the Referral was submitted to the Constitutional Court out of the legal deadline of 4 (four) months.
40. The Court recalls that the procedural deadline starts from the “last decision” in the proceedings of exhaustion of the legal remedies by which the Applicant's request has been rejected (see, the Case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility, of 26 December 2017 and, *mutatis mutandis*, EctHR Case, *Fernie v. the United Kingdom*, No. 14881/04, decision of 5 January 2006).
41. The Court also recalls its case-law in similar cases, which is consistent with the ECtHR case-law, on the basis of which the Applicant must exhaust the legal remedies which are expected to be admissible and effective. The Court can only consider legal remedies that are effective. The Applicant cannot extend the strict deadlines prescribed by the Law and the Rules of Procedure by using remedies that are not prescribed in proceedings in the given case (see Case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility, of 26 December 2017 and, *mutatis mutandis*, EctHR Case, *Fernie v. The United Kingdom*, No. 14881/04, decision of 5 January 2006).
42. Accordingly, the Court finds that the Applicant's Referral regarding the Judgment AC-I-13-0019-A0018 of the Appellate Panel was filed after the legal deadline of 4 (four) months.
43. The Court recalls that the purpose of the legal time limit of 4 (four) months, in accordance with Article 49 of the Law and pursuant to Rule 39 (1) (c) of the Rules of Procedure, is to promote legal certainty, by ensuring that cases relating to constitutional matters are considered within a reasonable time and that past decisions are not continually open to challenge (see the Constitutional Court Case No. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24, and ECtHR decision on admissibility in the case *Çelik v. Turkey*, Application no. 52991/99 of 23 September 2004).
44. The Court also refers to the Applicant's arguments regarding (non) compensation for the expropriation of the disputable property, and to the fact that the decision of the Municipality of Klina whereby said expropriation (in 1982) was carried out was not made available to the Applicant and the former owner.
45. In this regard, the Court points out that on the basis of the case file it is apparent that the Applicant did not raise the issue of expropriation before the regular courts or the SCSC and thus did not give the opportunity to the regular courts to deal with this issue.

46. In this respect, the Court emphasizes that, in accordance with the principle of subsidiarity, the Constitutional Court cannot consider this issue (this allegation) without having been previously raised and assessed in the proceedings before the regular courts. The principle of subsidiarity requires the Applicant to exhaust all procedural possibilities in a regular process in order to prevent a violation of the Constitution or, if there is a violation, to rectify such a violation (see, inter alia, decisions of Constitutional Court in cases: KI41/19; KI24/16; KI89/15; KI139/12; KI07/09).
47. In conclusion, the Court finds that the Referral does not meet the procedural criteria of admissibility stipulated in Article 113.7 of the Constitution, Article 47.2 and 49 of the Law and Rule 39 (1) (b) and (c) of the Rules of Procedure, and as such, the Referral must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20, 47.2 and 49 of the Law and Rule 39 (1) (b) and (c) of the Rules of Procedure, in the session held on 15 April 2020, unanimously

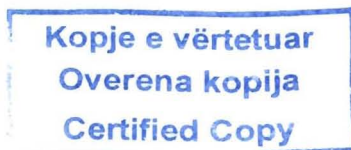
DECIDES

- 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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