



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

Prishtina, on 8 Juna 2020
Ref. no.:RK 1573/20

This translation is unofficial and serves for information purposes only

DECISION TO REJECT THE REFERRAL

in

Case No. KO116/19

Applicant

**Ismet Kryeziu as the alleged representative of the Ministry of
Environment and Spatial Planning**

**Request for legal interpretation of Decision AC-I-13-0125-0001 and 0002
of the Appellate Panel of the Special Chamber of the Supreme Court of
Kosovo on Privatization Agency of Kosovo Related Matters**

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 Ismet Kryeziu who claims to be the representative of the Ministry of Environment and Spatial Planning of the Republic of Kosovo (hereinafter: the Applicant).

Subject Matter

2. The subject matter of the Referral is the legal interpretation of Decision AC-I-13-0125-0001 and 0002 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 22 July 2015. In conjunction with the Judgment PAKR 158/15 of the Court of Appeals of Kosovo, of 5 April 2015.
3. The alleged representative submitted a question before the Constitutional Court(hereinafter: the Constitutional Court):

“we request from the Constitutional Court of Kosovo to provide us with a legal interpretation whether we should execute the final judgment of the Municipal Court confirmed by the District Court in Pristina, and the decision of the Special Chamber of the Supreme Court of Kosovo, rejecting the PAK's claim or suspend the proceedings concerning the judgment of the Court of Appeals PAKR. no. 158/15, of 05.04.2016, in order toto decide on the party's request for registration of property rights in her name according to the aforementioned acts.”

Legal Basis

4. The Referral is based on paragraph 10 of Article 93 [Competencies of the Government], and in conjunction with Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Proceedings before the Constitutional Court

5. On 8 July 2019, the alleged representative submitted the Referral to the Court.
6. On 10 July 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 31 July 2019, the Court notified the Kosovo Cadastral Agency about the registration of the Referral.
8. On 30 September 2019, the Court notified the Ministry of Environment and Spatial Planning of the Republic of Kosovo about the registration of the Referral.
9. On 3 October 2019, the Ministry of Environment and Spatial Planning of the Republic of Kosovo requested from the Court to forward to them the complete Referral KO 116 19 submitted by the alleged Applicant.
10. On 9 October 2019, the Court forwarded to the Ministry of Environment and Spatial Planning of the Republic of Kosovo the complete Referral KO116/19 submitted by the alleged representative.

11. On 30 December 2019, the alleged representative requested from the court to consider his Referral with urgency.
12. On 18 February 2020, the Court again sent an information letter to the Ministry of Environment and Spatial Planning of the Republic of Kosovo on the registration of the Referral and requested from it clarify its Referral, respectively or answer specific questions:

„1. Is Mr. Ismet Kryeziu, Director of the Legal Directorate of the Kosovo Cadastral Agency, submitting the Referral KO 116/19, titled a request for "legal interpretation" before the Constitutional Court on his own behalf as the director of the office he represents or in the name of the Ministry of Environment and Spatial Planning (MESP)? We kindly ask from you to confirm this exactly, by sending a direct answer indicating who has submitted the Referral KO116 / 19.

2. If the Referral was submitted on behalf of the MESP, please explain whether the Referral was submitted in the name of the MESP as one of the ministries of the Government of the Republic of Kosovo, or in the name of the entire Government of the Republic of Kosovo? In this regard, please confirm the decision-making process for the submission of this Referral so that we know who exactly has submitted the Referral KO116 / 19.

13. Ministry of Environment and Spatial Planning of the Republic of Kosovo did not respond to the Court's request nor did he provide any additional documents.
14. On 13 May 2020, having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court to reject the Referral.

Summary of facts

Proceedings before the Municipal and District Court in Prishtina based on a claim for annulment of sale contracts

15. On an unknown date in 2005, MB, Đ.V, Đ.LJ, Đ.S and Đ.T, acting in the capacity of legal heirs, filed a claim for annulment of sale contracts concluded by their legal predecessor M.R. with the Enterprise PIK „Kosova-Export“ from Fushë Kosovë.
16. On 15 May 2007, the Municipal Court in Prishtina rendered Judgment C. no. 2333/2005, whereby it upheld the claims of MB, Đ.V, Đ.LJ, Đ.S and Đ.T and annulled the sale contracts concluded by their legal predecessor M.R. with the Enterprise PIK „Kosova-Export“, and obliged the Enterprise PIK „Kosova-Export“ to return to the ownership and possession of the heirs of M.R. the immovable property that was the subject of annulled contracts.
17. On an unspecified date, the Enterprise PIK „Kosova-Export“ filed an appeal with the District Court in Prishtina against the Judgment (C. No. 2333/2005) of the Municipal Court in Prishtina, of 15 May 2007, arguing that this judgment was not in compliance with positive legislation.

18. On 2 October 2007, the District Court in Prishtina rendered the Judgment GŽ. no. 664/2007, whereby the appeal of the Enterprise PIK „Kosova-Export“ was rejected as unfounded whilst the judgment of the Basic Court in Pristina was confirmed in its entirety.

Proceedings before the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

19. On 11 March 2008, the Kosovo Trust Agency (hereinafter: KTA), representing the Enterprise PIK "Kosovo-Export" submitted a request to the Special Chamber of the Supreme Court of Kosovo to review once again the Judgment C. No. 2333/2005 of the Municipal Court in Prishtina, of 15 May 2007 and the Judgment GŽ. no. 664/2007 of the District Court in Prishtina, of 2 October 2007, arguing that the Municipal and District Court did not have jurisdiction to decide in these cases.
20. On 28 June 2013, the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel), by Decision SCA-08-0035, rejects the request of the KTA because it was filed out of time.
21. On 19 July 2013, the Privatization Agency of Kosovo (hereinafter: PAK) as the legal successor of the KTA filed an appeal with the Appellate Panel against the Decision (SCA-08-0035) of the Special Chamber of 28 June 2013, requesting to have this decision annulled and the case returned for retrial.
22. On 23 July 2015, by Decision AC-I-13-125-A0001 and A0002, the Appellate Panel rejected the appeal of the PAK and confirmed in its entirety the Decision (SCA-08-0035) of the Specialized Panel, of 28 June 2013.

Proceedings before the Office of the Kosovo Cadastral Agency in the Municipality of Graçanica

23. On 20 January 2011, the heirs of M.R. filed a request with the Office of the Kosovo Cadastral Agency in the Municipality of Graçanica for registration of ownership over the immovable properties that were returned to them by the Judgments of the Municipal and District Court.
24. On 24 June 2017, the Office of the Kosovo Cadastral Agency of the Municipality of Graçanica, by Conclusion 60/2011, suspended / terminated further resolution at the request of the heir of M.R., by reasoning *“After a detailed look into the case file, and inspection of the Judgment of the Municipal Court in Prishtina C. No.2333/05, of 15 May 2007, it was noticed that the said judgment was rendered by Judge Sh.Sh. Given that the Court of Appeals rendered the Judgment PAKR 158/15, of 05.04.2016, whereby several former judges, including Judge Sh. Sh., were found guilty of the criminal offence of issuing unlawful judicial decision, with the aim to cause harm to another person, [...]. In the said judgment, is mentioned as illegal decision taken by the defendant Sh. Sh, also the Judgment C.No.2333/05 of 15.05.2007. Due to the fact that the proceedings in this legal matter have not been concluded in a final manner, the OKCA Graçanica has suspended the decision-making in respect of your request*

until further notice, respectively pending the final, legal and enforceable judgment of the competent judicial authority.”

Proceedings before the Basic Court and the Court of Appeals in the case of determination of the criminal liability of Judge SH.SH

25. On 9 September 2014, the Basic Court in Prizren, by Judgment P. no. 272/13 found Judge SH.SH guilty of the criminal offence of Issuing unlawful judicial decisions and sentenced her to a suspended sentence, as well as to an accessory punishment of prohibition to perform the profession, activity or duty, for a period of two years.
26. On 24 December 2014, SH.SH filed an appeal with the Court of Appeals against the judgment of the Basic Court in Prizren, *“due to the serious violations of the provisions of criminal procedure, erroneous and incomplete determination of factual situation as well as decision on sentence.”*
27. On 5 April 2016, the Court of Appeals, by Judgment PAKR158/15, partially upheld the appeal of S.S., to the extent that the defendant's intent to obtain unlawful material gain could not be proved beyond a reasonable doubt and that the accessory punishment was too vague. In the remaining part the appeal was rejected as unfounded and the first instance verdict was upheld.
28. The enacting clause of the judgment of the Court of Appeals stated, inter alia, that,

“ Regarding the judgment of conviction against the accused: (...) S.S. and (...)

the accused(...) S~S. (...)have committed the criminal offence of issuing unlawful judicial decisions with the aim to cause harm to another person.

Regarding the accessory punishment imposed on the accused: (...)S.S., (...)

Pursuant to Article 57, paragraphs 1 and 2 of the PCKK, the accused (...) S.S., () are prohibited from performing the judicial profession, activity or duty for a period of 2 (two) years, starting from the day the judgment becomes final.

The remainder of the challenged judgment is confirmed.”

Applicant's allegations

29. The alleged representative addresses the Court, *“we request from the Constitutional Court of Kosovo to provide us with a legal interpretation of whether we should enforce the final judgment of the Municipal Court upheld by the District Court in Prishtina, and the decision of the Special Chamber of the Supreme Court of Kosovo, rejecting the PAK's claim or suspend the proceedings pursuant to the judgment of the Court of Appeal PAKR. no. 158/15, of 05.04.2016 in order to decide on the party's request for registration of property rights in her name under the above legal acts.”*

30. Further, the alleged representative also states, *“as a cadastre, we do not know whether this judgment has remained in force or is revoked, as the judgment does not clarify what should be done with these judgments of former judges, we also have other cases that are the same as this one.”*

Assessment of the admissibility of the Referral

31. The Court first examines whether the submitted Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121(hereinafter: the Law) and Rules of Procedure of the Constitutional Court of the Republic of Kosovo No.01/2018(hereinafter: the Rules of Procedure).
32. Article 113, paragraph 1, of the Constitution provides: *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
33. The Court also refers to Articles 22.4 and 48 of the Law, which provide:

Article 22 [Processing Referrals]

4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim. The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim.

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.”

34. Moreover, the Court takes into account Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which provides:

“(2) The referral shall also include:

[. ..]

(h) the supporting documentation and information...”

35. The Court also takes into account Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:

„[...] The Court may decide to summarily reject a referral of the referral is incomplete or not clearly stated despite request by the Court to the party to supplement or clarify the referral [...].”

36. As to the fulfillment of these conditions, the Court notes that the alleged representative in this Referral seeks a legal interpretation respectively a recommendation for further action regarding the execution of the final judgment of the regular courts.

37. The alleged Applicant, is more specifically putting the following question before the Court:

“should we enforce the final judgment of the Municipal Court which is confirmed by the District Court in Prishtina, and the decision of the Special Chamber of the Supreme Court of Kosovo rejecting the PAK's claim or suspend the proceedings under the judgment of the Court of Appeals PAKR. no. 158/15, of 05.04.2016.”

38. The Court first recalls that in the present case, pursuant Article 22 of the Law, the Court has informed the Ministry of Environment and Spatial Planning of the Republic of Kosovo twice and, for the purpose of final clarification, has requested from it to answer specific questions and clarify the Referral.

39. Further, on the basis of the acknowledgment of the receipt the Court finds that the notification was sent to the Applicant on 30 September 2019, after which on 9 October 2019 at the request of the Ministry of Environment and Spatial Planning of the Republic of Kosovo the complete Referral was forwarded to the Applicant, while on 18 February 2020, the Ministry of Environment and Spatial Planning of the Republic of Kosovo was once again requested to supplement and clarify its Referral to which the Court has not received any response.

40. The Court finds that the Applicant has not responded to the Court's request for clarification of the Referral and submission of supporting documents without which no public authority of the Republic of Kosovo can take any action.

41. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the Applicant, who has a direct interest in having his allegations and allegations dealt with by the Court in effective manner. Therefore, the Court cannot take into account the allegations of the alleged representative, as the Referral is incomplete and it has not clarified the complaints pursuant to the Constitution (see, *mutatis mutandis*, the case of the Constitutional Court, KIO3/15, Applicant *Hasan Beqiri*, of 13 May 2015, paragraph 19, as well as the case of the Constitutional Court, KIO7/16, Applicant: *Rifat Abdullahi*, of 14 July 2016, paragraph 22).

42. Therefore, the Court notes that the alleged representative, apart from his general and abstract Referral, did not provide the Court with the requested clarification or supporting documents, even though the Court has requested it from him.

43. Consequently, the Court finds that the present Referral is incomplete, as the alleged representative has not provided the requested clarification or any supporting documents requested by the Court to prove their claims.

44. The Court also notes that even if the Referral would have met the requirements stipulated by Article 35 (5) of the Rules of Procedure, the request for “legal

interpretation respectively the recommendation for further action in relation to the enforcement of final judgments of regular courts” initiated by the alleged representative simply does not fall within the jurisdiction of the Court, and accordingly the Court does not deal with such requests.

45. In sum, the Court concludes that the Referral does not meet the procedural requirements for further examination provided for in Rule 35 of the Rules of Procedure. Since the Applicant has failed to submit the required documents, the Referral must be summarily rejected, pursuant to Rule 35 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution, Articles 22.4 and 48 of the Law and Rules 29, 35 (5) of the Rules of Procedure, on 13 May 2020, unanimously

DECIDES

- I. TO REJECT the Referral;
- 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

Bajram Ljatifi

Arta Rama-Hajrizi



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