



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

Prishtina, on 20 August 2020
Ref. No.: RK 1606/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI185/19

Applicant

Abdylhadi Petlla

Constitutional review of Decision AC-I-17-0034 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 27 June 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 Abdylhadi Petlla from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Decision AC-I-17-0034 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) , of 27 June 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly has violated the Applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of Republic of Kosovo, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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 10 October 2019, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 January 2020, 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 23 January 2020, the Applicant was notified about the registration of the Referral and a copy thereof was sent to the SCSC.
8. On 9 June 2020, the Court requested additional documents from the Applicant and the SCSC.
9. On 12 June 2020, the SCSC submitted the requested documents.
10. On 22 July 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

11. On 14 June 2002, the Applicant filed a claim with the Municipal Court in Prizren for the annulment of the contract on sale with the Municipality of Prizren, concluded on 3 March 1966, requesting to be handed over in possession and use the immovable property located at the place called "Fusha e

Levishës”(Eng. Levisha field) , type of land garden, of the 3rd class , in an area of 43.45 ares*. The Applicant alleged that the abovementioned contract was concluded under conditions of pressure and threat by “the authorities of that time”.

12. On 10 September 2004, the Applicant proposed the specification of the claim, requesting that another cadastral parcel be given to him instead of the aforementioned parcel.
13. On 12 April 2007, the Applicant proposed the supplementation of the evidentiary procedure, by looking into the possession list of the cadastral parcel, the court to make an on-site visit, to obtain the opinion of the geodesy expert and the opinion of the agricultural expert.
14. On 23 March 2010, the Municipal Court in Prizren, by Judgment C.no.371 / 02, approved the Claimant's statement of claim, by obliging the Municipality of Prizren, due to the impossibility to return the cadastral parcel at the location called “Fusha e Levishës”, to transfer to the ownership, and possession of the Applicant, the cadastral parcel registered as a pasture of 2nd class, located at the place called “Mazno kamenje-lumi”. The Municipality of Prizren was requested to allow the registration in the cadastral books and to hand over the said cadastral parcel in free possession and use, within 15 (fifteen) days, under the threat of forcible execution.
15. The Municipality of Prizren filed an appeal against the judgment of the Municipal Court in Prizren, alleging substantial violations of procedural provisions, erroneous and incomplete determination of the factual situation and erroneous application of substantive law. On 1 September 2010, the Privatization Agency of Kosovo (hereinafter: the PAK) also filed an appeal against the above judgment, alleging that it was contradictory to itself and the reasons provided.
16. On 5 November 2012, the District Court in Prizren, by Decision Ac.no.505/ 2010, approved the appeals of the Municipality of Prizren and the PAK by quashing the Judgment of the Municipal Court in Prizren, C.nr.371 / 02, of 23 March 2010 and remanding the case for retrial to the first instance court. The District Court assessed that the court of first instance did not provide reasons on the decisive facts and that the legitimacy of the respondent, namely the Municipality of Prizren, was not established.
17. On 26 November 2012, the Municipal Court in Prizren, by Decision C.no.1061/ 12, was declared incompetent to decide on this matter, and referred the case to the Special Chamber of the Supreme Court for Privatization Agency of Kosovo Related Matters, as a competent court. In the proceedings before the SCSC, the claimant was Abdylhadi Petlla (the Applicant), while the respondents were the Enterprise ‘Progres Export-Arbanë’ and the PAK.
18. On 7 September 2016, the SCSC, through an order, requested from the Applicant to submit the inheritance decision within 20 days from the day of receipt of the order. In that order the Applicant was warned that in case he

would not respond to the order, the SCSC would dismiss the claim as inadmissible.

19. On 19 September 2016, the Applicant's representative had informed the SCSC that on 28 September 2015, the Applicant had withdrawn his authorization and that from that time onward he was not the Applicant's representative.
20. On 21 September 2016, the SCSC requested from the Applicant to submit the inheritance decision in order to establish the "real active legitimacy" of the parties to the proceedings, which is a procedural requirement for a claim to be valid in order for the trial to continue.
21. On 26 September 2016, the above order was sent to him and received by the Applicant, but he did not submit any response to the SCSC.
22. On 12 January 2017, the Specialized Panel of the SCSC, by Decision C-III-13-0116, dismissed the claim as inadmissible, since the Applicant had failed to submit the inheritance decision required by the aforementioned order. In this Decision, the Specialized Panel of the SCSC stated that: "(i) completing of a claim with material facts is a condition of admissibility; (ii) the SCSC had requested from the Applicant to submit proof of inheritance by giving him sufficient time; (iii) the Applicant had received the order for submitting the inheritance proof, however, he had chosen not to submit it until the decision was rendered by the SCSC; and, that (iv) the SCSC cannot assume that the Applicant is the sole legal heir of his predecessor, as long as he does not prove it by an inheritance decision".
23. On 7 February 2017, the Applicant filed an appeal against the above-mentioned ruling, due to erroneous application of the substantive law and violation of procedural provisions. The Applicant had provided as evidence: the birth certificate of Abdulhadi Petlla (the Applicant), the death certificate of A.P. (Applicant's mother), as well as the death certificate of E.J. Sh., in which his nephew, namely the Applicant appears as possible heir. The Applicant alleged that he never received the order for submission of the inheritance decision. He had also claimed that the former owner of the immovable had passed away in 1965 and the property was inherited by his sister, A.P., while her successor is the Applicant himself. The Applicant had claimed to be compensated for the property with another property, as the property that was taken from his predecessor had been given to someone else.
24. On 1 August 2018, the PAK filed a response to the Applicant's appeal, alleging that on the basis of the submitted evidence are not established the Applicant's allegations and that those allegations are not based on law and are not substantiated by evidence and convincing facts.
25. On 27 June 2019, the Appellate Panel of the SCSC issued Decision AC-I-17-0034, and rejected as unfounded the Applicant's claim and confirmed the Decision SCSC, C-III-13-0116 of the Specialized Panel, of 12 January 2017. The Appellate Panel of the SCSC assessed that the Applicant had not regulated the issue of inheritance, because he was given the opportunity to submit the inheritance decision, to prove his active legitimacy, but he had failed to submit

the said document. The Appellate Panel of the SCSC added that the inheritance decision is the only document under Article 171.1, in conjunction with Article 178.1, of the Law on Out Contentious Procedure, which confirms the active legitimacy in the proceedings.

26. On 24 September 2019, the Applicant proposed to the Office of the Chief State Prosecutor to file a request for protection of legality, against the Decision AC-I-17-0034 of the Appellate Panel of the SCSC, of 27 June 2019.
27. On 26 September 2019, the Office of the Chief State Prosecutor, by Notice KMLC.no.159 / 2019, notified the Applicant that his proposal was not approved because there was no sufficient legal basis for submitting a request for protection of legality. The Office of the Chief State Prosecutor also informed the Applicant that, on the basis of Article 9, paragraph 15 of the Law No. 06 /1-086 for the Special Chamber of the Supreme Court, he could submit a referral to the Constitutional Court seeking the constitutional review of any decision or judgment of the SCSC, or any other court.

Applicant's allegations

28. The Applicant alleges that the decisions of the SCSC in his case have caused a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.
29. The Applicant alleges: *“All what is left to be done by the party Abdylhadi Petlla, is to request from the Constitutional Court to approve the Referral submitted, seeking constitutional review of Decision AC-I-17-0034 of the SCSC, of 27.06.2019, because his right to fair trial, a right which is guaranteed according to the Constitution of the Republic of Kosovo, was violated”*.
30. With respect to the inheritance decision, the Applicant states: *“in this situation it is important to mention that the claimant, in relation to this legal issue, has not received either this order or any other document ... because the finding on the fourth page in the last line is imaginary and not real”*.
31. In respect of the actions of his representative, the Applicant alleges: *“[...] the reality is that the claimant has not taken any action and is surprised how this statement could stand, further in the decision, it is not stated which submission is referred to, and where is the claimant's signature, which implies that violations to the detriment of the claimant are evident [...]”*.
32. The Applicant does not raise any allegation against the Notification [KMLC.nr.159/2019] of the Office of the Chief State Prosecutor, of 26 September 2019.

Relevant legal provisions

LAW ON OUT CONTENTIOUS PROCEDURE Nr. 03/L-007

The judgment act for the inheritance Article 171

171.1 When the court in the hereditary procedure ascertains to which persons does belong the right on inheritance, will announce these persons as inheritors based on itself act judgment for inheritance.

Article 178

178.1 It is considered that according to the act judgment for the inheritance which took the final form it is ascertain which enters in the hereditary estate, who is an inheritor of the dead, how big is the belonging part of the estate, if it is restricted or loaded the right on inheritance and in which way, and also if it exist and which of the legate's right exist. All this values also for the partial act judgment for inheritance in the point of which was ascertained by him.

Assessment of the admissibility of the Referral

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

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

“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”.

[...]

35. In addition, the Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47 of the Law [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...”

36. 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-17-0034 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 27 June 2019, after having exhausted all legal remedies provided by law. The Applicant has also specified the rights and freedoms for which he alleges to have been violated, in accordance with the criteria of Article 48 of the Law and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.
37. Further, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure stipulates the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

“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”.
38. The Court notes that the Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.
39. The Applicant essentially alleges: (i) that he never received the order for submitting the inheritance decision; (ii) that he has not taken any action through his representative.
40. The Court initially notes, that the ECtHR case-law emphasizes that the fairness of a proceeding is assessed on the basis of the proceedings as a whole (See, the ECtHR Judgment of 6 December 1988, *Barbera, Messeque and Jabardo v. Spain*, no. 10590/83, paragraph 68). Consequently, when assessing the Applicant's allegations, the Court will also adhere to this principle (See also the case of Court KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and case KI143/16, Applicant *Muharrem Blaku and others*, Decision on Inadmissibility of 13 June 2018, paragraph 31).
41. In the following, the Court will address the Applicant's allegations, by applying the case law of the ECHR, pursuant to which, the Constitutional Court, on the basis of Article 53 of the Constitution [Interpretation of Human Rights

Provisions], is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

42. In the present case, the Court notes that the Appellate Panel of the SCSC assessed that the Applicant had not clarified the issue of inheritance. He was given the opportunity by this Panel to submit the inheritance decision, to prove his active legitimacy, but he had failed to submit the document in question. The Appellate Panel of the SCSC also clarified that the inheritance decision is the only document, pursuant to Article 171.1 in conjunction with Article 178.1 of the Law on Out Contentious Procedure, which confirms the active legitimacy in the proceedings of this nature.
43. In this respect, the main part of the decision of the Appellate Panel of the SCSC states: *“In the event of a claim relating to the rights to an inherited property, the Court must examine ex officio whether all the heirs are represented. The Inheritance Decision is the only document to sufficiently prove the inheritance position and should be sought from the claimant as soon as there arises any suspicion that not all heirs are represented as claimants in the specific case. If the Inheritance Decision has not been submitted, within a reasonable time, the claim must be dismissed as inadmissible. The active legitimacy of the claimant should be examined immediately as it would be a waste of time and resources to proceed further as long as it is not clear whether the claimant may be the holder of the right claimed by him. If he cannot be the holder of the right which claimed by him then the claim must be dismissed as inadmissible. In this case the Appellate Panel notes that the claimant has not regulated the issue of inheritance. The claimant was given the opportunity by the court, by the order submitted to the claimant on, 26/09/2016 to send the Inheritance Decision to prove his active legitimacy, but he failed to submit the said document. Therefore the complainant’s appeal claim that he has never received any order as well as the claim that he has no professional representative is unsubstantiated. The Appellate Panel finds that the Inheritance Decision is the only document under Article 171.1 in conjunction with Article 178.1 of the Law on Out Contentious Procedure, which confirms the active legitimacy in the proceedings.”*
44. The Court further notes that the Appellate Panel of the SCSC rejected the Applicant's claim as unfounded because the latter had failed to meet the legal requirement for review his claim in accordance with Articles 171.1 and 178.1 of the Law on Out Contentious Procedure, that is the submission of the inheritance decision.
45. In view of the above, the Court notes that the Applicant has been enabled the conduct of the proceedings on the basis of the adversarial principle; that he has been able to present arguments and evidence which he considers relevant to his case during the various stages of the proceedings; that he has been given the opportunity to effectively challenge the arguments and evidence presented by the opposing party; and that all the arguments, viewed objectively, which were relevant to the resolution of his case have been duly heard and examined by the courts; that the factual and legal reasons for the challenged decisions were laid out in detail; and that, compliant with the circumstances of the case, the proceedings, viewed in their entirety, were fair (See, inter alia, the case of

the Court No.KI118/17, Applicant *Sani Kervan and others*, Resolution on Inadmissibility, of 16 February 2018, paragraph 35; see also, *mutatis mutandis*, the case *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 29).

46. The Court notes that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, does not guarantee anyone a favourable outcome in the course of a judicial proceeding, nor does it provide for the Court to challenge the application of substantive law by the regular courts in a civil dispute (see accordingly the cases: KI118/17; KI142/15).
47. In this respect, it should be borne in mind that the “fairness” required by Article 31 of the Constitution and Article 6 of the ECHR is not “substantive” justice, but rather a “procedural” fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See, for example, case KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references mentioned therein).
48. In this regard, the Court notes that it is not its duty to deal with errors of law allegedly committed by the regular courts (legality), unless and in so far as such errors may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would result in exceeding the limits imposed in its jurisdiction. In fact, it is the primary role of the regular courts to interpret and apply the pertinent rules of the procedural and substantive law (See, for example, the case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
49. The Court further notes that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot by itself raise an argumentative constitutional allegation for a violation of the right to fair and impartial trial (see, *mutatis mutandis*, the case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21, and see also the case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).
50. Consequently, the Court considers that the Applicant has not substantiated the allegations that the respective proceedings were in any way unfair or arbitrary and that the challenged decision has violated his rights and freedoms guaranteed by the Constitution and the ECHR.
51. Therefore, the Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 22 July 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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