



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

Prishtina, on 4 December 2020
Ref.No.:RK 1653/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI101/19

Applicant

Lubisha Trajković

**Constitutional review of Decision AC-I-16-0209-A0001 of the Appellate
Panel of the Special Chamber of the Supreme Court of the Republic of
Kosovo, of 7 February 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 Lubisha Trajković residing in Vranje, Serbia (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [AC-I-16-0209-A0001] of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo (hereinafter: the Appellate Panel of the SCSC) of 7 February 2019.

Subject matter

3. The subject matter is the request for constitutional review of the challenged judgment which, as alleged by the Applicant, has violated his rights guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law] have been violated, and 46 [Property Protection] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] 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 18 June 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 June 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (presiding), Remzije Istrefi Peci and Nexhmi Rexhepi.
7. On 10 July 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the SCSC, and requested from them to provide the acknowledgment of receipt.
8. On 15 August 2019, the Court reiterated the request to the SCSC, regarding the submission of the acknowledgment of receipt.
9. On 19 August 2019, the SCSC submitted to the Court the acknowledgment of receipt which proves the time when the Applicant has received the challenged Decision.
10. On 10 November 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 the basis of the attached documentation, the subject matter of the dispute is the confirmation of property inheritance rights.

12. On 24 November 1998, the Municipality of Kamenica, acting upon the request for restitution of land, had issued the Decision [04-453-9/91] whereby to M. T. and the others was returned, respectively confirmed the property right over the cadastral parcels mentioned in the decision.
13. On 28 January 2003 the Applicant together with the heirs of M. T had addressed the Municipality of Kamenica, Department for Geodesy, Cadastre and Property through the lawyer, for the registration of property in the cadastral records.
14. On 12 December 2005 the Chief Executive Officer of the Municipal Assembly of Kamenica by decision [no.915] annulled the decision [04-453-9/91] of the Commission on Land Restitution, of 24 November 1998.
15. On 13 September 2006 the representative of M. T, filed a complaint with the Kosovo Cadastral Agency (hereinafter: KCA), due to the silence of the administration of the cadastral office in Kamenica.
16. On 6 November 2006, the KCA by decision [03/346/06] rejected as unfounded the appeal of M. T. The KCA justified its decision by finding as follows, that (i) the Municipal Cadastre had reviewed the request in timely manner; (ii) the same was sent via Post Office to the address of the lawyer of M.T. in Vranje and (iii) all administrative proceedings were suspended pending the final judgment of the District Court in Gjilan.
17. The Applicant filed a claim with the Supreme Court against the decision [03/346/06] of the KCA, of 6 November 2006.
18. The Supreme Court by decision [A-U.no.782/06] rejected the Applicant's claim as unfounded.
19. On 20 June 2008 the Applicant filed a request with the KCA, for the continuation of the suspended administrative procedure regarding the change of ownership of immovable property.
20. On 10 October 2008, the KCA by Decision [03-847-08] had rejected as unfounded the Applicant's request for the continuation of the suspended procedure for the replacement of immovable properties, on the grounds that (i) Municipality of Kamenica had annulled the decision [04-453-9 / 91] of 24 November 1998; (ii) and that in the present case we are dealing with a socially-owned property, hence according to Section 5 of UNMIK Regulation 2002/12 on the Establishment of the Privatization Agency of Kosovo, in this entity are included all rights and competencies for all socially owned properties and socially owned enterprises and public enterprises.
21. On 21 November 2008, the Applicant filed a claim against the Decision [03-847-08] of the KCA of 10 October 2008, with the proposal to annul the decision of the KCA and to instruct the respondent on the replacement of property on the basis of of Decision [04-463-9/91] of the Commission on Land Restitution, of 24 November 1998.

22. On 13 September 2013, the Basic Court in Prishtina (hereinafter: the Basic Court) by Judgment [A.no.1315/2011] approved the Applicant's claim and annulled the Decision[03-847-08] of the KCA of 10 October 2008 on the grounds that: (i) the decision of the administrative body has shortcomings, due to which its legality can not be assessed; (ii) it does not have the content as provided by Articles 84 para.2 and Article 85 of the LCP and (iii) the administrative body does not indicate on the basis of which evidence the suspended procedure cannot be continued and whether the circumstances which have previously caused the suspension of the procedure in relation to the Applicant's request, have ceased to exist.
23. The Applicant filed an appeal with the Court of Appeals against the Judgment [A.no.1315 / 2011] of the Basic Court, of 13 September 2013, alleging violations of the provisions of the Law on Contested Procedure, erroneous application of the substantive law, by proposing to annul the judgment of the first instance and approve the statement of claim specified in the session of 13 September 2013.
24. Also the KCA filed an appeal against the above-mentioned Judgment of the Basic Court, alleging essential violations of the contested procedure, erroneous application of the substantive law, by proposing to have the case remanded for reconsideration.
25. On 1 August 2014, the Court of Appeals by Judgment [AA.no.357/2013] rejected as unfounded the appeals by the Applicant and the KCA and confirmed the Judgment of the Basic Court.
26. On 16 March 2015, the KCA through Decision [no.03 / 847/08] again rejected as unfounded the Applicant's complaint. In its decision, the KCA among other things stated that:

“The Kosovo Cadastral Agency has again reviewed all legal evidence for the full determination of the factual situation stated in the judgments of the mentioned courts, and finds that the Decision of the Commission of Kamenica on Restitution of Land to former owners, no. 04-463-9/91, dated 24.11.1998, cannot be applied - the property right cannot be registered at the Directorate of Cadastre, MA of Kamenica, because the cadastral parcels bearing the numbers 199 and 200, property of the former SOE AC “Agroprodukt” Kriva Reka, based in Kamenica have been privatized by the Privatization Agency of Kosovo, with Declaration of Transfer of Ownership no. 2627, 46 of 14.03.2014, and were transferred to the New Enterprise Agroproduct Land in Muqivërc, LLC- through a 99 years lease to Agron Thaçi.

Therefore, the second instance body rejects the party's request for registration of property, pursuant to Section 3.4 (iii) of Law 2002/5 on the Establishment of the Immovable Property Rights Register, Article 8.2 of Administrative Instruction no. MPS 2004/03 and Article 36 of Law No. 02 / L-28 on the Administrative Procedure of the Republic of Kosovo. For pursuing its property rights, according to article 30 of Law No. 04 / L-034 on the Privatization Agency of Kosovo concerning the confirmation of

property rights the party may address the Special Chamber of the Supreme Court, which is competent to decide on property disputes between the PAK and natural persons."

27. On an unspecified date, the Applicant filed a claim against the PAK with the Special Chamber of the Supreme Court (hereinafter: the SCSC) with proposal (i) to issue a preliminary injunction and (ii) to oblige the respondent to allow and accept that the Applicant and other co-owners register their properties with the Directorate for Cadastre, Geodesy and Property in the Municipality of Kamenica.

28. On 23 August 2016, the SCSC by Decision [C-III-13-0476] dismissed the Applicant's claim as inadmissible. The reasoning of this Decision stated that "[...] *the lack of active legal legitimacy, leads to the dismissal of the claim at any stage of the procedure because it is an absolutely negative condition for further proceedings.*

The claimant is instructed about the dismissal of the claim, he/she still does not have the right to file the claim again, pursuant to Article 28 of the Law No. 04 / L-033 in addition to the Decision on inheritance, due to the legal legitimacy."

29. The Applicant filed an appeal with the Appellate Panel of the SCSC against the Decision [C-III-13-0476] of the SCSC, of 23 August 2016.
30. On 7 February 2019, the Appellate Panel of the SCSC by Decision [AC-I-16-2029-A0001] rejected as unfounded the Applicant's appeal and confirmed the Decision [C-III-13-0476] of the SCSC, of 23 August 2016.

Applicant's allegations

31. The Applicant alleges that the Appellate Panel of the SCSC, by rejecting his appeal as unfounded, violated his rights protected by Articles 3, 24, and 46 of the Constitution.
32. According to the Applicant, his right to equality before the law was violated because "*the final decision of the Municipality of Kamenica, the Commission on Land Restitution bearing the number: 04-453-9 / 91, of 24.11.1998 has not been implemented*", among other things, he states that "*Article 24 of the Constitution has been violated because as a member of the Serbian nationality minority he has not enjoyed equal legal protection, respectively he has been discriminated against*".
33. The Applicant further alleges that he was not granted the proposal for preliminary injunction, which according to him was "*necessary*" for the protection of his property. In this respect he alleges that he was discriminated against "*in relation to the members of the Albanian majority*" on the grounds that his property was transferred "*without basis*" into the use of person A.TH.
34. Finally, the Applicant addresses the Court with the following request:

“[...]following the review of all the allegations presented in the appeal, to confirm that there has been a violation, specifically of Article 3, Article 24 and Article 46 of the Constitution to the detriment of the Applicant, and subsequently the decision of AC-16-0209-A0001 to be declared unlawful.”

Assessment of the admissibility of the Referral

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

36. 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”.

37. The Court, further, refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

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.[...]”.

38. As to the fulfillment of the admissibility requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Decision [AC-I-16-2029-A0001] of the Appellate Panel of the SCSC, of 7 February 2019; he has clarified all rights and freedoms which he claims to have been violated, and has exhausted all legal remedies prescribed by law, as well as has submitted the Referral within the legal deadline provided by law.
39. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria established in Rule 39

[Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (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.”

40. In this respect, the Court first recalls that the Applicant alleges that the Appellate Panel of the SCSC, by Decision [AC-I-16-2029-A0001] of 7 February 2019, has violated his rights guaranteed by Articles 3, 24 and 46 of the Constitution.
41. In this regard, the Court notes that, in essence, the Applicant complains that in his case the regular courts have not correctly determined the factual situation, because they did not recognize the decision of the Commission on Land Restitution [no. 04-453-9 / 91] of the Municipality of Kamenica, of 24 November 1998.
42. In relation to the aforementioned allegations, the Court considers that the Applicant has built his case on the grounds of legality, namely on the erroneous determination of the factual situation pertaining to the decision on land restitution and erroneous interpretation of the Law by the Appellate Panel of SCSC and those of lower instances, including the KCA as the administrative body that has initially rejected his request for recognition of the right to property registration.
43. The Court recalls that these allegations concern the domain of legality and as such do not fall within the jurisdiction of the Court, and therefore, in principle, cannot be considered by the Court. (See, the case KI56/17, *Applicant Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35).
44. In this regard, the Court emphasizes that it is not its duty to deal with errors of law allegedly committed by the regular courts (legality), unless and insofar as such errors may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a court of “fourth instance”, which would result in exceeding the limits imposed on its jurisdiction. In accordance with the case law of the ECtHR as well as its already consolidated case-law, the Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in one way rather than in another. (See, the ECtHR case *García Ruiz v. Spain*, No. 30544/96, of 21 January 1999, para. 28 and see also the case: KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
45. The Constitutional Court can only consider whether in a proceeding the evidence was presented in a correct way and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See, inter alia, the case *Edwards v. the United Kingdom*, No. 13071/87, Report of the European Commission on Human

Rights, adopted on 10 July 1991).

46. 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 having reviewed all the proceedings, the Court also found that the proceedings before the SCSC were not unfair or arbitrary. (See the case *Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).
47. In the circumstances of the present case, in order to elaborate even more concretely the general principles of the constitutional trial, the Court notes that the Appellate Panel of the SCSC had rejected the Applicant's Referral as unfounded and confirmed the Decision of the SCSC, because the Applicant could not prove that he had active legitimacy to seek recognition of the right over the disputed property.
48. More specifically, the Appellate Panel of the SCSC in its decision had stated as follows:

“The reasoning of the decision states that: by the Court Order of 22 April 2016, the court has requested from the claimant to complete the review of the inheritance measure at the competent court or at the Notary within the legal deadline, where his right as the heir of his predecessor over the immovable property in question would be confirmed. But, despite this, until the day of issuance of this decision he has not submitted to the court the decision on review of inheritance. To confirm his right, to have active legitimacy to seek recognition of the right over the disputed ownership. The Special Chamber reasoned that through Article 28.2.2 of the Annex of Law no. 04 / L-033, a request/complaint is admissible in case the Applicant has the right to initiate a procedure within the meaning of Article 1, Article 5 of the Law on the Special Chamber. The final condition cited in this article can only be met if a decision on inheritance is provided. Consequently, the lack of active legitimacy in the proceedings imposes the dismissal of the claim at any stage of the proceedings. Since it represents an absolutely negative condition for further proceedings.

The claimant is instructed that due to the dismissal of the claim, he still has the right to file a claim again, pursuant to Article 28 of Law No. 04/L-033, with the decision on inheritance, due to the general universal character, can not be decided by the trial panel. Such a decision is reflected in all properties to all heirs and to the debts of the deceased. The decision is rendered by the competent court or by the Notary.

Also the Appellate Panel agrees with all these findings of the Specialized Panel and due to the fact that the complainant neither with the complaint makes any attempt to provide the inheritance document. He rather deals with secondary things. Trying to give a lecture to the court, which laws it should apply according to his case.”

49. Based on the above, the Court notes that the Applicant has failed to prove through any act before the Appellate Panel of the SCSC, that he is the heir of the property in question, and thus the Court emphasizes that the Appellate

Panel has acted correctly when it dismissed the Applicant's claim, due to the lack of active legitimacy.

50. In this respect, the Court further considers that the Applicant has not succeeded to show and prove that the proceedings before the Appellate Panel of the SCSC or other regular courts were unfair or tainted by arbitrariness or that his fundamental rights and freedoms protected by the Constitution have been infringed as a result of 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, the case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, 8 August 2016, paragraph 44 and see also the case 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).
51. The Court recalls that the Applicant also alleges that in the circumstances of the present case, the challenged Decision of the Appellate Panel of the SCSC was issued in violation of his fundamental rights and freedoms, guaranteed by Articles 3, 24 and 46 of the Constitution.
52. As regards the Applicant's allegation of a violation of Articles 3 and 24 of the Constitution, the Court recalls that, as a general rule, equality before the law implies the equality of individuals who are on equal terms and their right to equal protection of the law without discrimination. However, equality before the law does not mean that for an individual or a category of persons who are in objectively different conditions there should be same treatments and solutions. (See, the case KI173/18, Applicant *Nijazi Pasoma*, Resolution on Inadmissibility of 22 July 2019, paragraph 30).
53. In this context, the Court considers that the Applicant has not presented any *prima facie* evidence and has not substantiated his allegations, which would show that he was discriminated against in the proceedings before the public authorities, including the regular courts. (See, in this context, the case KI44/18, Applicant *Mega Shop*, Resolution on Inadmissibility of 8 May 2019, paragraph 66).
54. The same principle applies to the Applicant's allegations before the Court concerning the alleged violations of Article 46 of the Constitution. The Court emphasizes that the Applicant alleges violations of the Constitution, without providing arguments and justifying the violation of the Constitution by the challenged Decision of the Appellate Panel of the SCSC. (See, inter alia in this respect, the cases of Court no. KI68/17, Applicant *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).
55. As regards these allegations, the Court states 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 mentioning of 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 case of the Court KI136/14, Abdullah Bajqinca, Resolution on Inadmissibility of 10 February 2015, paragraph 33; KI49/ 19, cited above, paragraph 58).

56. Therefore, in these circumstances, based on the foregoing and taking into consideration the allegations raised by the Applicant and the facts presented by him, the Court by also relying on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegations for violation of his fundamental rights and freedoms guaranteed by the Constitution.
57. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 10 November 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

Safet Hoxha



Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.