



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 05 January 2021
Ref.No.:RK 1687/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI 119/20

Applicant

Lutfi Beselica

**Constitutional review of Judgment AC-I.-17-0496-A001 of the Appellate
Panel of the Special Chamber of the Supreme Court of Kosovo on
Privatization Agency of Kosovo Related Matters, of 24 June 2020**

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 Lutfi Beselica from Podujevë (hereinafter: the Applicant), represented by Hasan Pëvertica, a lawyer from Podujevë.

Challenged decision

2. The Applicant challenges the Judgment AC-I-17-0496-A001 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 24 June 2020.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment which, according to the Applicant, violated his rights guaranteed by Article 7 [Values], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] 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, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (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 24 July 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 August 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (presiding), Selvete Gërxhaliu and Bajram Ljatifi.
7. On 10 August 2020, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo about the registration of the Referral.
8. On 10 December 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Applicant's Referral inadmissible.

Summary of facts

9. On 7 February 2007, the Applicant filed a statement of claim with the Municipal Court in Podujevë for confirmation of ownership over the cadastral parcel no.1359 at a location called "Malishte" in the total area of 05.84.44 ha (hereinafter: the disputable parcel); in the proceedings before the Municipal Court in Podujevë the Applicant referred to the contract on sale Vr. No. 309/95 of 18 April 1995 as the basis on which he has acquired the ownership over the said property.

10. On 24 January 2013, the Basic Court in Prishtina – Branch in Podujevë, by Decision C. no. 40/2007 declared itself incompetent to adjudicate this legal matter and referred the case to the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) for further jurisdiction.
11. On 16 December 2016, the Applicant submitted a proposal for imposition of preliminary injunction to the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) and thereby prevent the Privatization Agency of Kosovo(hereinafter: PAK) to sell the disputable parcel.
12. On 17 January 2017, the Specialized Panel, by Decision C–III–13–0377, approved the Applicant's proposal for imposition of the preliminary injunction, by ordering a prohibition to undertake any legal proceedings with respect to the privatization/liquidation of the disputable parcel, and emphasizing that the preliminary injunction shall remain in force pending the final decision in the present case.
13. On an unknown date, the PAK filed an appeal with the Appellate Panel against the decision (C–III– 3–0377) of the Specialized Panel of 17 January 2017, requesting that this decision be annulled and the case be remanded for retrial.
14. On 21 March 2017, the Appellate Panel, by Decision AC-I-17-0073, dismissed as inadmissible the appeal of the PAK, reasoning that the PAK was not represented by a lawyer of the Kosovo Bar Association.
15. On 20 July 2017, the Specialized Panel, by Judgment C-III-13-0377, approved the Applicant's statement of claim for confirmation of ownership over the disputable parcel, with the reasoning:

“In the case in question, there was a simple conclusion of the contract followed by the transfer of the disputable property in the name of the claimant. The claimant managed to become the owner, even without the court's decision. However, taking into consideration that for PAK, the legal title acquired on the basis of a simple contractual transfer of property is still disputable, the court was obliged to confirm that Lutfi Beselica was the owner of the property.”
16. On 11 August 2017, the PAK filed an appeal with the Appellate Panel against Judgment C-III-13-0377 of the Specialized Panel, due to substantial violations of the provisions of procedural and substantive law and erroneous determination of the factual situation.
17. On 24 June 2020, the Appellate Panel, by Judgment (AC-I-17-0496-A0001), upheld the PAK's appeal and modified the Judgment of the Specialized Panel, in the way that it rejected as inadmissible the Applicant's statement of claim for confirmation of ownership over the disputable parcel. In the reasoning of the judgment, the Appellate Panel states:

“The Appellate Panel considers that in the appealed judgment the factual situation was not determined in a complete and correct manner, because the judgment is based upon invalid and suspicious evidence which contain many contradictions with respect to the stamps and signatures. The Appellate Panel found that the claim filed with the Municipal Court in Podujevë concerns the cadastral parcel no. 1359 CZ Obraniq, covering an area of 05.84.44 ha, that was sold for the amount of 15,500 dinars. In a contract on sale, dated 18 April 1995, presented before the Municipal Court in Podujevë along with the claim, is indicated the parcel no. 1359 in the area of 05.84,44 m2, possession list no. 206, as well as the amount of 15,500 dinars. In a copy of the contract dated 24 May 1995, certified at the court on the same day, and involving the same parties is indicated the parcel no. 1403 in the area of 6.32.77 m2 and parcel no. 1407 in the area of 4.02.83 m2, and the total amount of 25,165.80 dinars. This creates ambiguities and suspicions about the authenticity of the documents presented before the court. Also the second objection of the PAK concerning the conclusion of the Specialized Panel is founded, as the original documents presented during the administrative procedure in the municipality and in the cadastral office were certainly original. This conclusion should have been based upon the evidence and facts presented by the court and not on assumptions. Also the other allegation of the PAK regarding the lack of a public and open competitive bidding procedure is founded. The Appellate Panel could not find any evidence in the case file that there was held any such procedure, which is required under Article 9 the Law on Transfer of Immovable Property, according to which all contracts on alienation of immovable properties in social ownership concluded without public and open competitive bidding procedure are null. Even though the claimant has emphasized in the claim that this alienation was carried out through a public competition, this was not proven by any evidence. The Appellate Panel has found in the case file two payment receipts, which refer to the aforementioned contracts. Receipt no. 185/95 of 25 May 1995 refers to the contract Ov.no.323/95 in the amount of 25,165.08 dinars, which was paid in the name of DD ZZ Agricultural Cooperative “Podujevë”, while in the round stamp stands the name of the Agricultural Cooperative “Përparimi” - Podujevë. The entire receipt is written in Cyrillic letters. In support of this invoice, a certificate was issued by the director Miladin Laketić and signed by the claimant, which proves that the claimant on May 24, 1995 has paid the amount of 25,165.08 dinars in the name of parcel no. 1403 and parcel no. 1407. The second receipt bears the date 18 April 1995, and is completed in Cyrillic letters, the indicated amount of payment is 15,500 dinars, and it does not refer to any act, it only states that it has to do with a land purchase, but it bears the stamp of the Agricultural Cooperative “Përparimi” - Podujevë, and a notarized signature dated 3 February 2017 on its authenticity. And the payment was not carried out through the Social Accounting, as required at the time. (...).”

Applicant's allegations

18. The Applicant alleges that the challenged Judgment of the Appellate Panel of the SCSC has violated his rights guaranteed by Article 7 [Values], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.
19. The Applicant alleges that “the Judgment AC.I-17-0496-A001 of the Specialized Panel of the Supreme Court of Kosovo, of 24 June 2020, has violated his rights under Article 7 (Values), Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property) of the Constitution of the Republic of Kosovo, because he was denied his property rights over the immovable property which he had purchased in full accordance with the positive laws applicable in 1995, the property was acquired on the basis of an auction, he has paid the full price of the immovable property, following a public bid, and has entered into possession and used the property on the basis of trusteeship, the procedure was not disputed by any entity, and he has used the property as a good farmer. In the present case, there have been implemented all legal procedures for the purchase of immovable property and its registration at the cadastre, as well as there was carried out the payment of all legal and contractual obligations”.
20. The Applicant in essence justifies the violation of the aforementioned articles of the Constitution, by stating that the challenged *“judgment was rendered in substantial violation of legal provisions, and upon erroneous determination of the factual situation and erroneous application of the substantive law”*.
21. Finally, the Applicant requests from the Court to,
“assess the legality and decide positively, and thus instruct the SCSC to reconsider his judgment and confirm that the claimant Lutfi Beselica is the owner of the said parcel”.

Assessment of the admissibility of the Referral

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
23. 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.”*

24. 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
[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...”

25. As to the fulfillment of the admissibility criteria, as stated above, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment (AC-I.-17-0496-A001) of the Appellate Panel, of 24 June 2020 by clearly specifying the articles which he considers to have been violated, after having exhausted all legal remedies prescribed by law. The Applicant has also submitted the Referral in accordance with the deadline provided in Article 49 of the Law.
26. However, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure, which provide:

“(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.”

27. The Court first notes that the aforementioned rule, which is based on the case-law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, allows the latter to have the referrals declared inadmissible on the grounds which relate to the merits of the case. More exactly, under this rule, the Court may declare a referral inadmissible on the basis of and after assessing the merits of a referral, namely if it considers that the content of the referral is manifestly ill-founded on constitutional basis, as prescribed in paragraph 2. of Rule 39 of the Rules of Procedure.

28. On the basis of the ECtHR case law, but also of the Court, a referral may be declared inadmissible as “clearly unfounded” in its entirety or only in relation to a specific allegation that a referral may contain. In this respect, it is more accurate to call them “manifestly ill-founded allegations”. Based on the ECtHR case law, these allegations can be classified into four different groups: (i) allegations that are qualified as “fourth instance” allegations; (ii) allegations categorized as “clear or apparent absence of a violation”; (iii) “unsubstantiated and unjustified” allegations; and finally, (iv) “confusing and unclear” allegations. (see, more precisely, for the concept of inadmissibility on the basis of a referral assessed as “manifestly ill-founded” and the specifics of the four above-mentioned categories of allegations qualified as “manifestly ill-founded”, the ECtHR Practical Guide on Admissibility Criteria of 31 August 2019; Part III. Inadmissibility based on the merits, A. manifestly ill-founded applications, paragraphs 255 to 284).
29. In the context of assessment of the admissibility of the Referral, namely the assessment whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case contained in this Referral and the Applicant's relevant allegations, during which assessment the Court shall apply the ECtHR case law, according to which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
30. The Court recalls that the Applicant alleges that the challenged decision has violated his rights from, (i) Article 31 [Right to Fair and Impartial Trial], (ii) Article 46 [Protection of Property] and (iii) Article 7 [Values] of the Constitution.
31. The Court notes that the Applicant reiterates the same arguments which he has submitted in the proceedings before the Appellate Panel, that the Appellate Panel has already dealt with this issue, hence in the following paragraphs the Court will further elaborate the proceedings before the SCSC.

(i) As regards the allegation for a violation of Article 31 of the Constitution

32. In the present case, the Court notes that the Applicant's allegations regarding the violation of Article 31 of the Constitution amount to erroneous determination of factual situation and erroneous application and interpretation of the law by the Appellate Panel, whereby he raises the question of erroneous application and interpretation of legal provisions. The Applicant also requests from the Court to *assess the legality of the challenged decisions*, which falls exclusively within the jurisdiction of the regular courts (legality).
33. In that sense, the Court reiterates that the complete determination of the factual situation, as well as the interpretation and application of the law are in the full jurisdiction of regular courts, and that the role of the Constitutional Court is only to ensure that the rights guaranteed by the Constitution and other legal instruments are respected. Therefore, the Constitutional Court cannot act as a “fourth instance” court (See: in this context, the ECtHR case *García Ruiz v.*

Spain, judgment of 21 January 1999, paragraph 28 and references therein; and see also the cases of the Court KI128/18, cited above, paragraph 56; and KI62/19, cited above, paragraph 58).

34. Therefore, in these circumstances, based on the foregoing and taking into consideration the allegations made by the Applicant and the facts presented by him, the Court, having relied also on the standards established 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 allegation for violation of fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR (see in this context, inter alia, the cases of the Court KI128/18, Applicant: *Limak Kosovo International Airport J.S.C.*, “*Adem Jashari*”, Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant: *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56-57; KI110/19, Applicant: *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).
35. The Court also emphasizes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR does not guarantee to anyone a favourable outcome in the judicial proceeding, nor does it provide for the Court to put into discussion the application of substantive law by the regular courts in a civil dispute, where mainly one of the parties wins and the other one loses (see, in this context, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain*, judgment of 6 December 1988, paragraph 68; and cases of the Court KI128/19, cited above, paragraph 58; and KI22/19, Applicant: *Sabit Ilazi*, Resolution on Inadmissibility of 7 June 2019, paragraph 42).
36. In this respect, in order to avoid misunderstanding among the applicants, it must be borne in mind that the “fairness” required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not a “substantive” but rather a “procedural” fairness. This translates in practical terms into adversarial proceedings, in which parties are heard and placed on an equal footing before the court (see, in this context, the case of the Court KI64/20, Applicant *Asllan Meka*, Resolution on Inadmissibility of 03 August 2020, paragraph 41; and KI22/19, cited above paragraph 43).
37. 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 before the regular courts cannot by itself raise an arguable allegation for a violation of the right to fair and impartial trial (see, in this context, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, judgment of 26 July 2005, paragraph 21, and see also the case of the Court KI128/19, cited above, paragraph 59).

(ii) *As regards the allegation for a violation of Article 46 of the Constitution*

38. Taking into account the Applicant's allegations concerning his right to property, the Court finds that the Specialized Panel of the SCSC in the Judgment C–III–13– 0377 found that the Applicant became the owner of the disputable parcel even without a court's judgment.

39. However, the Court also notes that the Specialized Panel of the SCSC failed to provide an adequate response to the PAK's allegations as to the credibility of the attached documents, namely the evidence.
40. The Court also notes that as regards the Applicant's allegations concerning the right to property, the Appellate Panel of the SCSC has responded to the Applicant by reasoning that (i) the conclusion of the Specialized Panel with respect to the authenticity of the documents should have been based upon the evidence and facts not upon assumptions; (ii) pursuant to Article 9 of the Law on Transfer of Immovable Property applicable at the time of the conclusion of the disputable contract, all contracts concluded without auction and a public and open bidding procedure are null; and (iii) the payment related to the purchase of the disputable plot was not carried out through social accounting.
41. In this respect, the Court finds that pursuant to the relevant legislation from the period when the contract was concluded as well as the procedure followed during the conclusion of the contract, there is an ambiguity and doubt about the authenticity of the documents presented before the court.
42. The Court recalls that Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR do not guarantee the right to acquisition of property (see *Van der Mussele v. Belgium*, paragraph 48, ECtHR judgment of 23 November 1983; *Slivenko and Others v. Lithuania*, paragraph 121, ECtHR judgment of 9 October 2003).
43. Further, the Applicant may allege a violation of Article 46 of the Constitution only to the extent that the challenged decisions relate to his "possessions"; within the meaning of this provision "possessions" may be the existing possessions", including claims, in respect of which an applicant can argue that he has a "legitimate expectation" that he will acquire an effective enjoyment of any property right.
44. No "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and where the applicant's submissions are subsequently rejected by the national courts (see *Kopecky v. Slovakia*, paragraph 50, ECtHR Judgment, of 28 September 2004).

(iii) As regards the allegation for a violation of Article 7 of the Constitution

45. In the end, in respect of the allegations for a violation of Article 7 [Values] of the Constitution, the Court emphasizes that the Applicant alleges a violation of this Article without providing arguments or justifying its violation by the challenged judgment of the Appellate Panel. The Applicant's allegations basically rely upon the violation of Article 31 and Article 46 of the Constitution, while these allegations have already been assessed by the Court as manifestly ill-founded on constitutional basis.
46. The Court recalls its case-law according to which the mere mention of a particular article of the Constitution, without a clear and relevant justification

on how was that article violated, is insufficient as an argument for activating the defence mechanism provided by the Constitution and the Court as an institution that takes care about the respect for human rights and freedoms (see, in this context, the cases of the Court KIo2/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Physical Planning]*, Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta* , Resolution on Inadmissibility of 20 October 2019, paragraph 34)

47. Such a position of the Court is based upon the case law of the ECtHR, pursuant to which allegations or complaints that are not substantiated by arguments and evidence are declared inadmissible as manifestly ill-founded (see the ECtHR Practical Guide on Admissibility Criteria of 30 April 2019; Part I. Inadmissibility based on the merits, A. Manifestly ill-founded applications; 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283). In addition, such allegations that do not adequately clarify the alleged violation are also inadmissible under Article 48 of the Law in conjunction with Rule 39 paragraph (1) (d) of the Rules of Procedure, under which the Applicants are required to accurately clarify and adequately set forth the facts and allegations for violation of fundamental rights and freedoms.
48. In the circumstances of the present case, the Court considers that the Applicant has not accurately clarified the facts and allegations for violation of the above articles of the Constitution and consequently, these allegations must be declared inadmissible as manifestly ill-founded on constitutional basis, as established in paragraph 2. of Rule 39 of the Rules of Procedure.
49. Accordingly, the Court finds that the Referral is manifestly ill-founded on constitutional basis and declares it inadmissible pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 10 December 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

Radomir Laban

Arta Rama-Hajrizi



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