



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

Prishtina, on 8 March 2021
Ref. no.: RK1724/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI29/20

Applicant

Gegë Palushaj

Constitutional review of Judgment AC-I-15-0179-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters, of 16 January 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 Gegë Palushaj residing in Klina (hereinafter: the Applicant), represented by Salih Musa, a lawyer in Prishtina.

Challenged decision

2. The Applicant challenges Judgment AC-I-15-0179-A0001 of the Appellate Panel of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 16 January 2020 (hereinafter: Appellate Panel of the SCSC).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment [AC-I-15-0179-A0001] of the Appellate Panel of the SCSC, which allegedly violates the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

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] and Article 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 13 February 2020, the representative of the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 February 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Artta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
7. On 4 March 2020, the Court notified the Applicant's representative of the registration of the Referral. On the same day, the representative was requested to complete the referral form and attach the relevant court decisions related to the challenged Judgment, as well as the power of attorney as evidence of the Applicant's representation before the Court.
8. On 7 April 2020, the Applicant's representative submitted to the Court the completed form together with the relevant documentation, including the valid power of attorney signed by the Applicant.
9. On 10 February 2021, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral inadmissible as manifestly ill-founded.

Summary of facts

10. The Referral refers to a property dispute between the Applicant and the legal entity KB Malishgani-Klinë, dating from the 60s, and the subject matter of the dispute is the cadastral parcel no. 446/3, in an area of 0,08.09 hectares, registered in the cadastral books with no. 777 in CZ - Klina.
11. In 1963, based on Judgment C. nr. 20/62 of the District Court in Peja, of 9 August 1963, the disputed immovable property was expropriated and passed into the ownership and possession of KB Malishgani-Klinë.
12. On 20 November 2006, the Applicant filed a claim with the SCSC for confirmation of ownership, requesting restitution and handing over into possession of the disputed immovable property in question, alleging that this property was taken from his testators against their wish and will and it was never compensated.
13. On 5 March 2007, the Specialized Panel, by Decision SCC-06-048, referred the disputed case to the Municipal Court in Klina, which by the Decision [C.nr.76/2007] of 22 March 2008 dismissed the claim of the Applicant considering it as an adjudicated case.
14. The Applicant, against the Decision [C.nr.76/2007] of the Municipal Court in Klina, of 22 March 2008, filed an appeal with the SCSC, and the latter on 2 April 2009, by Decision SCA-08-0057 rejected his appeal and upheld the Decision [C.nr.76 / 2007] of the Municipal Court in Klina, of 22 March 2008, as grounded.
15. Within the legal time limits, the Applicant filed an appeal with the Appellate Panel of the SCSC due to erroneous determination of the factual situation and violations of the provisions of the applicable laws.
16. On 14 June 2012, the Appellate Panel of the SCSC, by Decision ASC-09-0010, annulled the Decision of the Municipal Court in Klina and the Decision of the Specialized Panel SCA-08-005 of 2 April 2009, whereby this case was considered an adjudicated case. This was due to the fact that Judgment P.br.20/62 of the District Court in Peja was related to monetary compensation, while in the claim submitted to the SCSC, the Applicant had requested restitution into ownership and possession of the disputed property.
17. On 28 July 2015, the Specialized Panel, in the retrial proceedings, issued Judgment C-IV-13-0456 whereby the Applicant's claim was rejected as ungrounded. The legal reasoning of this judgment provides that: *"The Panel does not consider the issue of the active legitimacy of the claimant to be contested, due to the fact that he has brought the Decision of the Basic Court in Peja - Klina Branch C.T.nr. 2/15 dated 05.05.2015 and other evidence such as death certificate and birth certificate. The Panel finds that based on the evidence administered at the hearing session and*

that of the Judgment of the District Court in Peja C.nr.20/62 dated 13.02.1962, Decision nr. 4156/62 dated 14.11.1962, issued by the Supreme Court of Serbia, possession list nr. 777 issued on 08.02.2006 by the Directorate of Geodesy and Property in Klina, as well as history no. 4798 dated 20.10.2006 issued by the Directorate of Cadastre, Geodesy and Property in Klina, the Specialized Panel unequivocally found that the statement of the claim of the claimant is ungrounded”.

18. The Applicant, within the legal time limit, filed an appeal with the Appellate Panel of the SCSC, against the Judgment [C-IV-13-0456] of the Specialized Panel of the SCSC, of 28 July 2015, due to erroneous determination of factual situation and violations of the provisions of applicable laws.
19. On 16 January 2020, the Appellate Panel of the SCSC, by Judgment AC-I-15-0179-A0001 rejected the appeal of the Applicant as ungrounded and upheld Judgment C-IV-13-0456 of the Specialized Panel, of 28 July 2015, on the grounds that the Applicant was “*compensated with the final Judgment of the District Court in Peja, C.nr.20/62, of 13 February 1962, in the amount of 283.700 Dinars in the name of compensation for the property taken, cadastral parcel no. 446/3 in an area of 8.09 ares of land, for cutting 53 bodies of plums as well as court costs in the amount of 20.416 Dinars, therefore he cannot claim the restitution of the property for which he has already been compensated*”.

Applicant's allegations

20. The Applicant alleges that the panels of the SCSC have violated his right to a fair trial, guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR because: “*... regarding this immovable property was decided by Judgment of the District Court C. nr. 20/62, dated 15 February 1962 when the KTA did not exist at all, but I do not know on what basis the Supreme Court decided on such a case with the KTA, because the claimant has only requested the restitution of the property which was taken from him in an unfair manner; that he never agreed for the compensation of this area but always asked for it to be restitution to the previous owner otherwise so far the KTA has never been able to prove with any evidence only that it has compensated the claimant in any way for the property in question but with its incomprehensible Judgment rejected the Claimant's Appeal as ungrounded and upheld Judgment C-4-13-0456 of the Specialized Panel of the SCSC, of 28 August 2015*”.
21. Finally, the Applicant requests from the Court: “*... to approve in its entirety the Referral and to QUASH the case, by remanding the case for retrial to the first instance, or to MODIFY the Judgment and decide over the matter in favor of the Applicant Gegë Palushaj from Klina; we request that this Court make a fair Judgment based on merits and based on evidence and facts related to the implementation of the Law; I consider that all the statements that have been seriously violated have been summarized, taking into consideration the manner of making the*

decision by the Supreme Court without realizing the Judgment of the District Court in Peja at all, therefore the Court has so far failed to improve the changes in relation to the legal provisions of the European Convention incorporated in the Constitution of the Republic of Kosovo”.

Admissibility of the Referral

22. The Court first examines whether the Referral has fulfilled the admissibility criteria, defined by the Constitution, provided by Law and further specified by the Rules of Procedure.

23. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulates:

“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. Furthermore, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, 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. Regarding the fulfillment of the admissibility criteria, as mentioned above, the Court considers that the Applicant is an authorized party and challenges an act of public authority, namely Judgment AC-I-15-0179 - A0001 of the Appellate Panel of the SCSC, of 16 January 2020. The Applicant has also exhausted the available legal remedies, clarified the fundamental rights and freedoms he alleges have been violated, in accordance with Article 48 of the Law, and submitted the Referral within the time limit set forth in Article 49 of the Law.
26. However, in addition to the above, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria], namely in paragraph (2) of Rule 39 of the Rules of Procedure, which provides:

“(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 recalls that the Applicant alleges that the challenged Judgment of the Appellate Panel of the SCSC has violated his rights to a fair trial, because he was unjustly denied the right of ownership over the disputed immovable property and that this immovable property was never compensated by KB Malishgani- Klinë.
28. In this context, the Court will assess the constitutionality of the challenged Judgment within the scope of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, as this is the essence of the Applicant's allegation, based on Article 53. [Interpretation of Human Rights Provisions] of the Constitution.
29. The Court recalls that the Applicant requests from the Court that: *“... this Court make a fair Judgment based on merits and evidence and facts regarding the application of the Law (...)”*, which means that his allegation is related to verification of facts, interpretation and application of the provisions of applicable laws. Therefore, from the very beginning of the examination of this Referral, the Court considers that the Applicant's allegation, in fact, raises issues of law (legality) and falls within the scope of the regular courts and not the Constitutional Court.
30. In this respect, the Court reiterates that that it is not a fact-finding Court, and that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, as is the interpretation and application of law. The role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution. Therefore, the Constitutional Court cannot act as a “fourth instance court”, as requested

in the present case by the Applicant (see the case of the Constitutional Court, KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility, of 5 April 2012 and cases cited therein).

31. Furthermore, it is not the task of the Court to replace its assessment of the facts with that of the regular courts and, as a general rule, it is the task of these courts to assess the evidence made available to them. The Court can only examine whether the proceedings in the regular courts were generally conducted in such a manner that the Applicant had a fair trial (see, ECtHR, *Edwards v. The United Kingdom*, Application No. 13071/87, Report of the European Commission of Human Rights, of 10 July 1991).
32. The Court considers that the Referral of the Applicant fails to prove that the relevant panels of the SCSC acted arbitrarily or unfairly. Furthermore, the Court considers that based on the case file and the allegations of the Applicant, the Specialized Panel and the Appellate Panels of the SCSC provided detailed and clear reasons when deciding upon the case, including the reasons over which they rejected the appeal of the Applicant as not grounded in law. No constitutional matter has been raised by the Applicant that could make the proceedings “irregular” in its entirety, in terms of Article 31 of the Constitution.
33. Furthermore, the challenged Judgment of the Appellate Panel of the SCSC contains a concrete reasoning concerning the allegations of the Applicant, stating that: “...it is not disputable that the Claimant has already been compensated with the final Judgment of the District Court in Peja, C.nr.20/62, of 13 February 1962, in the amount of 283.700 Dinars in the name of compensation for the property taken, cadastral parcel no. 446/3 in an area of 8.09 ares of land, for cutting 53 bodies of plums as well as court costs in the amount of 20.416 Dinars, therefore he cannot claim the restitution of the property for which he has already been compensated (...)”.
34. The reasoning further states: “The claimant both in the claim and in the appeal, apart from the rhetorical repetition that he was not compensated, did not provide any evidence in support of these allegations. On the other hand, the material evidence found in the case file, proves the opposite of what the claimant alleges. For these reasons, this case can rightly be considered as an adjudicated case due to the fact that by the final Judgment of the District Court in Peja C.nr.20/62 dated 13 February 1962, the claimant was compensated for the lost property and for the loss of trees in that property”.
35. Therefore, it seems that the Applicant simply did not agree with the outcome of the proceedings before the respective panels of the SCSC, however his allegation cannot automatically raise a substantiated claim for violation of the right to a fair and impartial trial (see *Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).

36. In these circumstances, the Court finds that the Applicant has not substantiated by evidence nor has it sufficiently substantiated its allegation of violation of human rights and fundamental freedoms guaranteed by the Constitution and the ECHR, because the presented allegations and the facts do not in any way show that the panels of the SCSC had denied him those rights
37. Therefore, the Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible, in accordance with Rule 39 (2) of the Rules of Procedure.

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 10 February 2021, 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

Nexhmi Rexhepi

**Kopje e vërtetuar
Overena kopia
Certified Copy**

Arta Rama-Hajrizi

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