



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 19 December 2016
Ref. No.:RK1021/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI105/15

Applicant

Mehmet Bajraktari and others

**Constitutional review of Notification KMLC. no. 44/15, of the Chief State
Prosecutor's Office, of 10 April 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mehmet Bajraktari, Hamit Bajraktari, Brahim Bajraktari and Arxhend Bajraktari (hereinafter: the Applicants) from Gllogoc, represented by Alexander Borg Oliver, lawyer in Prishtina.

Challenged decision

2. The Applicants challenge Notification KMLC. no. 44/15, of the Chief State Prosecutor's Office of 10 April 2015, Decision Rev. no. 272/14, of the Supreme Court of Kosovo, which was served on the Applicants' representatives on 23 December 2014. The Applicants also challenged Decisions Ac. no. 2052/2012 of 3 September 2013, and Ca. no. 3824/13, of 3 July 2014, of the Court of Appeal.

Subject matter

3. The subject matter is the Applicants' request for the constitutional review of the challenged decisions, which allegedly violated their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights], and the rights guaranteed by the European Convention on Human Rights (hereinafter: the ECHR), under Article 6 [Right to a fair trial], Article 13 [Right to an effective remedy], Article 14 [Prohibition of discrimination] and Article 1 of Protocol 1 [Protection of property].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 August 2015, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 September 2015, the President of the Court by Decision GJR. KI105/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI105/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 20 October 2015, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
8. On 3 October 2016, the President of the Court, by decision, appointed Judge Bekim Sejdiu, as a member of the Review Panel, replacing Judge Robert Carolan, who resigned from the position of a Judge on 9 September 2016.

9. On 20 September 2016, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral inadmissible.

Summary of facts

10. On 26, namely on 30 April 2001, the Applicants filed separate claims with the Municipal Court in Glllogoc against the Municipality of Glllogoc and the Company for the fuel transport "Kosova Petrol" regarding the confirmation of ownership over the cadastral parcels referred to in the claim, which allegedly have been expropriated to them and to their father illegally in 1976 by the respondent, the Municipality of Glllogoc. The Applicants in the claim stated that they still possess some parts of the immovable property and have built various facilities there.
11. The Applicants' claims were registered in the court as C. no. 52/2001 and C. no. 52/2001, but, the court on 25 May 2001, joined the cases into a single case by registering with characteristic number C. no. 52-55/2001, because they were of the same legal nature.
12. On 3 September 2001, the Municipal Court in Glllogoc, by Judgment C. no. 52-55/2001 approved the Applicants' claim and recognized them the right of ownership over the parcels mentioned in the claim.
13. According to the Applicants, the District Court in Prishtina, by Decision Ac. 49-01/2001 (which they did not attach in the case file, but they would bring it later), "*entirely on procedural grounds*" annulled the first instance judgment and remanded the case for retrial to the Municipal Court in Glllogoc.
14. On 29 December 2005, the Municipal Court in Glllogoc, by Judgment C. no. 4/02, in the retrial process rejected the Applicants' claim as ungrounded.
15. On 14 August 2008, the District Court in Prishtina, by Judgment Ac. no. 256/2006, upheld Judgment C. no. 4/02 of the first instance and rejected the Applicants' appeal as ungrounded.
16. On 30 July 2009, the Supreme Court by Judgment, Rev. no. 603/2008, rejected as ungrounded the revision filed by the Applicants against the second instance Judgment.
17. On 12 April 2010, the Applicants through their authorized representatives filed with the Court of Appeal of Kosovo the request for repetition of proceedings finalized by Judgment Rev. no. 603/2008, of the Supreme Court.
18. On 5 May 2010, the Applicants supplemented the request for repetition of proceedings.
19. On 3 September 2013, the Court of Appeal, by Decision Ac. no. 2052/12, rejected as ungrounded the request for repeating the procedure finalized by the final Judgment of the Supreme Court.

20. On 9 October 2013, the representative of the Applicants in accordance with legal advice filed appeal with the trial panel of the Court of Appeal, with the request to annul the Decision on rejection of the request for repetition of the proceedings.
21. On 8 July 2014, the Panel of the Court of Appeal, with Decision CA. no. 3284/13 rejected as ungrounded the appeal of the representatives of the Applicants and upheld the Decision of 3 September 2013.
22. On an unspecified date, the Applicants filed a request for revision with the Supreme Court on the grounds of essential violations of the contested procedure provisions, requesting the annulment of the two decisions of the Court of Appeal which rejected the request for repetition of the proceedings.
23. On 20 November 2014, the Supreme Court by Decision Rev. no. 272/14, rejected as ungrounded the request for revision.
24. On 26 March 2015, the representative of the Applicants filed a request for protection of legality with the State Prosecutor of Kosovo against the Decision of the Supreme Court regarding the request for revision.
25. On 10 April 2015, the State Prosecutor in his Notification KMLC no. 44/15 addressed to the office of the Applicants' representative, found that there is no basis to file extraordinary legal remedy- the request for protection of legality, as *"pursuant to Article 245.3 of LCP, such a request is not allowed against the court decision that was taken during the revision."*

Applicant's allegations

26. The Applicants allege that the violation of the right to fair and impartial trial, the judicial protection of rights, and the right to property that are guaranteed by the Constitution and the ECHR, occurred because the regular courts have not taken into account all the facts related to the property, adding that the deprivation of property, initially by the Municipality, was made without any written document and it was factual. Later on, the courts did not take into account the certified contracts related to the issue of inheritance of the contested properties that were certified by the courts. It is also alleged that the issue of expropriation was not correctly addressed, and that the trial had elements of bias because of participation of a judge in various stages of the proceedings.
27. The Applicants requested the Court to hold that there has been a violation of human rights, as emphasized in the Referral and that the Court *"renders such additional, sufficient instructions that it considers necessary for proper implementation of justice in the circumstances and, inter alia, to provide that particularly the rights of ownership and possession be returned completely to the Applicants."*

Admissibility of the Referral

28. In order to adjudicate the Applicants' Referral, the Court has to first examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
29. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

"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."

30. In addition, the Court assesses whether the Applicants filed Referral within the time limit and in this case refers to Article 49 of the Law, which provides that *"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*
31. In order to verify whether the Applicants have submitted the Referral within the prescribed four 4 (four) month deadline, the Court refers to the date of receipt of the final Decision by the Applicants and the date of submitting the Referral to the Constitutional Court.
32. The "final decision" for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicants' claim (See *mutatis mutandis Paul and Audrey Edwards v. UK*, No. 46477/99, ECtHR, Decision of 14 March 2002). The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of (See *mutatis mutandis Norkin v. Russia*, App. 21056/ 11, ECtHR, Decision of 5 February 2013 and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
33. Regarding the request for protection of legality submitted to the State Prosecutor, the Court notes that the State Prosecutor referring to legal provisions in force notified the Applicants that: *"pursuant to Article 245.3 of the LCP such a request is not allowed against the decision that was taken during revision."*
34. Article 245, paragraph 3 of the Law on Contested Procedure establishes that:

"The request for protection of legality is not allowed against the decision that was taken during revision or request of protection of legality by the court with competencies to decide for judicial means."

35. In the circumstances of the present case, it is clear that the request for protection of legality was not an effective legal remedy and that there could be no legitimate expectation to the success of this remedy because it was explicitly provided by the law that the extraordinary legal remedy was not allowed to be filed.
36. For the foregoing reasons, the Court considers that the final decision in the present case is Decision Rev. no. 272/14 of the Supreme Court and the time-limit begins to run from the date of receipt of the aforementioned decision by the Applicants' representative (See *Bayram and Yildirim v. Turkey*, App. No. 38587/97, ECtHR, Decision of 29 January 2002) and cannot take into account the Notification of the State Prosecutor.
37. Thus, from the submissions it appears that the Decision regarding the request for revision of the Supreme Court was served on the Applicants' representative on 23 December 2014, and this is confirmed by the stamp in the front page of the Decision, whereas the Applicants submitted the Referral to the Court on 10 August 2015 (see, *inter alia*, Resolution on Inadmissibility of the Constitutional Court KI201/13, Applicant *Sofa Gjonbalaj*, of 17 April 2013).
38. In the circumstances when the referral is manifestly out of time, the Court does not find it necessary to consider the allegations filed regarding the alleged violations of the right to fair trial, in all its elements, neither the right to property guaranteed by the Constitution and the ECHR.
39. Based on the foregoing, it results that the Referral has not been submitted within the legal deadline stipulated by Article 49 of the Law, and it is to be declared inadmissible, because it is out of time.

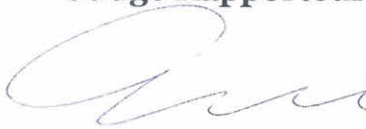
FOR THESE REASONS

The Constitutional Court, pursuant Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 20 October September 2016, 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. TO DECLARE this Decision effective immediately.

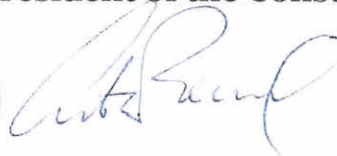
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi