



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

Prishtina, 31 August 2015
Ref. No.: RK 831/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI11/15

Applicant

Ymer Bardhi

**Constitutional Review of Decision of the Appellate Panel of the Special
Chamber of the Supreme Court of Kosovo, AC-I.-14-0233,
of 1 December 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Ymer Bardhi with residence in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Appellate Panel), AC-I.-14-0233, of 1 December 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision. The Applicant does not mention, specifically, what Articles of the Constitution have been violated.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 4 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 March 2015, the President of the Court by Decision no. GJR. KI11/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. KI11/15, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 28 April 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral to the Appellate Panel.
8. On 1 July 2015, by Decision GJR. KI11/15, the President appointed Judge Arta Rama-Hajrizi as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate in the Constitutional Court ended on 26 June 2015.
9. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court to declare the Referral inadmissible.

Summary of Facts

10. According to the Applicant's allegations, the immovable property owned by his predecessors, was unlawfully taken in 1946 and was allocated to other persons. On an unspecified date, the abovementioned persons sold the disputed land to the socially owned enterprise „BUJQËSIA“ from Peja.
11. In September 2013, the Applicant initiated proceedings before the Trial Panel of the SCSC in which he requested the annulment of the above-mentioned sale-purchase agreement, by which the socially owned enterprise „BUJQËSIA“ from Peja, now under the administration of the Privatization Agency of Kosovo

(hereinafter: PAK) has become the owner of the disputed immovable property. In addition, the Applicant also requested from the Trial Panel of the SCSC to impose Interim Measure to stop the alienation of the mentioned immovable property under the PAK administration.

12. On 22 July 2014, the Trial Panel of the SCSC [Decision C-III-13-0462] approves the Applicant's request for Interim Measure to stop the alienation of the mentioned immovable property under the PAK administration, pending a final decision on the merits of the case.
13. On 31 July 2014, the PAK filed an appeal against the decision of the Trial panel of the SCSC with the Appellate Panel of the SCSC, alleging that the Applicant since 1952 and onwards has never been legal titleholder of the disputed immovable property. Under Article 268 of the Law on Associated Labor, the return of property may be requested within five years from the date of notification, and no later than 10 years.
14. On 25 November 2014, the Appellate Panel of the SCSC, [Decision AC-I.-14-0233] approved the PAK appeal and annulled Decision [C-III.-13-0462] of the Trial Panel of the SCSC and rejects the Applicant's request for the imposition of Interim Measure. In the reasoning of its Decision, the Appellate Panel of the SCSC, among other things, stated:

„The Applicant's allegation to keep/use the property in good faith is not a legal argument for an interim measure.

For the foregoing reasons, the Appellate Panel annuls the challenged decision and rejects the Applicant's request for interim measure as ill-founded.

This decision has no bearing on the final solution of this request, on the contrary, the Applicants are encouraged to offer evidence in a proceedings in order to substantiate their claim over the property.“

Relevant legal provisions

Law on Associated Labor

PR no. 528

of 25 November 1976

Article 268.

If the immovable property became a social enterprise without any legal basis, its reinstatement can be requested within five years from the date of becoming aware, but not later than ten years.

[...].

Applicant's allegations

15. The Applicant considers that the Appellate Panel of the SCSC, by its Decision AC-I.-14-0233-A0001, of 1 December 2014, annulled the Decision of the Trial Panel of the SCSC with ungrounded reasoning.
16. The Applicant further states:

„That the Appellate Panel of the SPECIAL CHAMBER of the Supreme Court of the Republic of Kosovo in Prishtina, by decision, number and date as stated above, is contrary to every legal norm and rule consequently anticipated the final decision of the claimants' claim.“

17. The Applicant requests the Court that:

*„Decision AC-I-14-0233-A0001, of the Appellate Panel of the SPECIAL CHAMBER of the Supreme Court of Kosovo in Prishtina, of 01.12.2014, is annulled while Decision C-III-13-0462, of the Specialized Panel of the SPECIAL CHAMBER of the Supreme Court of Kosovo in Prishtina, of 20 July 2014, regarding the **IMPOSITION OF INTERIM SECURITY MEASURE**, at the expense of the disputed real property registered in the certificate no. 01-30-13, Cadastral Zone LUTOGLAVA, Cadastral Municipality of Peja, **is upheld until the decision on merits of claim - on 17 September 2013.**“*

Admissibility of the Referral

18. The Court shall first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
19. In this regard, the Court refers to Article 113 (1) and (7) of the Constitution, which provides:

„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.“

20. The Court notes that the Applicant's Referral is reviewed regarding the violation of the rights and freedoms guaranteed by the Constitution and the ECHR. However, the Court notes that the Applicant in his Referral, in addition to the legal basis for submission of Referral, did not specifically mention what rights and freedoms guaranteed by the Constitution have been violated by the challenged decision, although Article 48 of the Law provides:

“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“.

21. In addition, the Court takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide:

“(1) The Court may consider a referral if:

[...]

(d) *the referral is prima facie justified or not manifestly ill-founded.*

(2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

(a) *the referral is not prima facie justified, or*

(b) *the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*

(c) *the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*

(d) *the Applicant does not sufficiently substantiate his claim. ”*

22. The Court notes that the Applicant states that the decision of the Appellate Panel of the SCSC is contrary to any legal norms and rules.
23. In this regard, the Court considers that the Appellate Panel of the SCSC in its decision provided valid reasons for its findings (see: paragraph 12). Therefore, the Appellate Panel of the SCSC reasoned its decisions and substantiated the Applicant's allegation regarding the rejection of the request for Interim Measure, reasoning that *“The Applicant's allegation that they use this property in good faith is not a legal argument for issuing a preliminary injunction.”*
24. Furthermore, the Appellate Panel further stated that, *“This decision has no bearing whatsoever on the final settlement of this claim; on the contrary, the claimants are encouraged to offer evidence in the proceedings in order to prove their claims over the property.”*
25. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decisions rendered by the SCSC. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken, (see: case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights, of 10 July 1991).
26. In the present case, the Court does not find that the relevant proceedings before the SCSC were in any way unfair or arbitrary (see: *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
27. Therefore, the Court considers that the Applicant has not substantiated his allegation on constitutional grounds and he did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision on rejection of the request for imposition of the interim measure.
28. The Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 31 August 2015, unanimously:

DECIDES

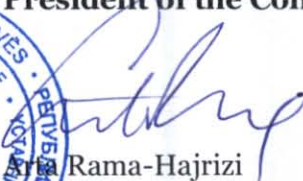
- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur


Snezhana Botusharova



President of the Constitutional Court


Rama-Hajrizi