



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

Prishtina, 6 October 2017  
Ref. no.: RK 1136/17

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI11/17

Applicants

**Aleksandar Đekić, Ljiljana Tomić, Radunka Tomić and Slavoljub Tomić**

**Constitutional review of Decision AC-I-12-0050-A0001 of 06 October 2016 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters**

**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 and  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Referral was submitted by Aleksandar Đekić, Ljiljana Tomić, Radunka Tomić and Slavoljub Tomić (hereinafter: the Applicants), who are represented by the lawyer Halil Palaj.

## **Challenged decision**

2. The Applicants challenge Decision AC-I-12-0050-A0001 of 06 October 2016 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), which was served on the Applicants on 21 October 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decisions, which according to the Applicants' allegations have violated their rights, as guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of 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 09 February 2017, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 20 March 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Almiro Rodrigues and Selvete Gërxhaliu-Krasniqi.
7. On 31 March 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Appellate Panel.
8. On 06 September 2017, 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**

9. On 24 January 1964, by Decision No. 35/63 of the Commission for Land Consolidation of the Municipality of Prishtina, it was ordered to conduct the land consolidation of the immovable property, by which was taken the immovable property of Aleksandar Tomić, namely the cadastral parcel No. 1467/2 in the surface area of 0.47,33 ha, and as a replacement for the abovementioned parcel he was given a part of the cadastral parcel No. 273 in the surface area of 0.54,59 ha.
10. On 22 December 2008, the Applicant Aleksandar Đekić filed a claim with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on

Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel).

11. In the statement of claim, the Applicant Aleksandar Đekić requested the restitution of property from the cadastral parcel No. 1467/2, registered in the name of the Socially Owned Enterprise-Kosovo Export (Hereinafter: SEO Kosovo Export), arguing that the property that was the subject of replacement (a part of cadastral parcel No. 273) was never delivered to the Applicant Aleksandar Đekić nor registered on his behalf. The Applicant Aleksandar Đekić claimed that without any obstacles he continued to use parcel No. 1467/2.
12. On 19 January 2010, the Privatization Agency of Kosovo (PAK) as an administrator of the respondent SOE Kosovo Export filed a response to the claim, alleging that the claim should be rejected as inadmissible or unfounded, arguing that the decision of the Commission for Land Consolidation of the Municipality of Prishtina as a legally binding administrative decision cannot be annulled by a new contested proceeding.
13. On 20 January 2011, the Specialized Panel (Decision SCC-08-0304) rejected the claim as unfounded reasoning that *“the 1964 land consolidation decision had not been challenged in accordance with the 1986 Law on Administrative Procedure and that the ownership of the exchanged property would be a matter of execution of the decision and not of its validity. The ownership claim on the basis of adverse possession would be ungrounded pursuant to Section 20 of the Law on Basic Property Relation (no. 6/1980).”*
14. On 12 April 2011, the Applicant Aleksandar Đekić filed an appeal with the Appellate Panel against the Decision (SCC-08-0304) of the Specialized Panel.
15. On 2 December 2011, the Appellate Panel (Decision ASC-11-0045) approved the appeal as grounded, annulled the Decision of the Specialized Panel and remanded the case for retrial. The Appellate Panel considered that: *“the Specialized Panel has erroneously applied the law that was not in force at the time of the challenged decision (1986 Law on Administrative Procedure) [...]”*.
16. On 30 March 2012, the Specialized Panel ordered the Applicant Aleksandar Đekić to submit an inheritance decision proving that he is a heir of Aleksander Tomić (who was his father) under whose name is Decision No. 35/63 of the Commission for the Land Consolidation of the Municipality of Prishtina.
17. On 17 April 2012, the Applicant Aleksandar Đekić submitted to the Specialized Panel the decision on inheritance of 21 January 1960 (of his grandmother, Jorgacije Tomić (Đekić)). According to this decision on inheritance the heirs of Jorgacije Tomić (Đekić) are: Aleksandar Tomić, Slavoljub Tomić, Radunka Tomić and Ljiljana Tomić.
18. At the same time, the Applicant Aleksandar Đekić filed a supplemented claim to the Specialized Panel, requesting that the Applicants Ljiljana Tomić, Radunka Tomić and Slavoljub Tomić, are included in the proceedings as claimants.

19. The Applicants did not submit the decision on inheritance proving that they are the heirs of Aleksander Tomić (for whom was issued Decision No. 35/63 of the Commission for the Land Consolidation of the Municipality of Prishtina).
20. On 11 May 2012, the Specialized Panel (Judgment SCC-08-0304) rejected the Applicant's claim as ungrounded.
21. The Specialized Panel noted that only the Applicant Aleksandar Đekić is considered as a claimant to the dispute, and not the applicants Slavoljub Tomić, Radunka Tomić and Ljiljana Tomić. The Specialized Panel did not accept the new claimants *"because the respondent (SOE-KPA) was against it and also it would require the delay of the decision."*
22. On 10 July 2012, the Applicant Aleksandar Đekić appealed to the Appellate Panel claiming: *"the erroneous determination of factual situation due to the fact that successors to the contested property are also brother and two sisters of claimant, violation of Art. 182 of contested procedure and contradiction of the reasoning with evidence, as well as the provision from decision of 24 January 1964 are not implemented in accordance with the cadastral book."*
23. On 10 June 2016, the Appellate Panel ordered the Applicant Aleksandar Đekić to submit a copy of his birth certificate and inheritance decision confirming his inheritance right after the death of his father Aleksandar Tomić. The Appellate Panel notified the Applicant Aleksandar Đekić that failure to provide the decision will result in dismissal of the claim.
24. On 6 October 2016, the Appellate Panel by (Decision AC-II-12-0050-A0001) rejected the appeal as ungrounded, modified (Judgment SCC-08-0304) of the Specialized Panel concluding that the claim should be rejected as inadmissible due to the failure of the claimant to submit relevant evidence on his legal interests, reasoning that:

*"... evidence on the inheritance right is a requirement for admissibility of the claim, when claimants submit claim regarding the rights acquired by inheritance. The Court should check ex officio the admissibility requirements. In line with this official duty the court sent to the appellant who is also a claimant, the order dating 10 June 2016, requesting the inheritance decision but claimant failed to submit it. Therefore and regardless of the grounds of the appeal, the first instance decision is modified and the claim dismissed as inadmissible"*

### **Applicant's allegations**

25. The Applicants initially stated that Decision No. 35/63 of the Commission for Land Consolidation of the Municipality of Prishtina (of the year 1963) was not fully executed, reasoning that *"...The Municipality of Prishtina [...], though being legally obliged to implement the aforementioned Decision in its entirety, it did so only partially, to the detriment of the claiming parties – the Applicants of this Referral."*

26. Furthermore, the Applicants state that the challenged decision was unlawful at the moment of its adoption, because it did not include all four successors, but only Aleksandar Tomić. The Applicants also emphasize that the disputed parcel *“...was always possessed and used by them without obstruction by anyone, and due to this fact, the co-owners were never aware of the formal modifications made, since the respondent – KBI never had this immovable property in its possession.”*
27. Based on the above, the Applicants reason that *“in the present case Article 46 of the Constitution of the Republic of Kosovo has been violated, thus, the guaranteed right to property has been violated; the right to property is a sacred and inviolable right, and no one, be it a state authority, has the right to violate it, as is the present case, unless otherwise provided by law. In the present case, there has been a violation of Article 31 of the Constitution – the Right to Fair and Impartial Trial.”*
28. Finally, the Applicants request the Court :
- “... To declare Decision AC-I-12-0050-A0001 of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 06 October 2016, inadmissible, and order to review the case based on merits.”*

### **Assessment of admissibility of the Referral**

29. The Court first examines whether the Applicants have met the admissibility requirements established in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
30. 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.”*
31. The Court also refers to Article 48 [Accuracy of Referral] of the Law, which 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”.*
32. In addition, the Court recalls Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which stipulates:
- (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.*

33. In the present case, the Court notes that the Applicants are authorized party to submit a Referral to the Constitutional Court and that they have exhausted the effective legal remedies; therefore, they met the procedural requirements provided for in Articles 113.7 of the Constitution. However, to determine the admissibility of the Referral, the Court still has to assess whether the Applicants have met the requirements of Article 48 of the Law and the admissibility criteria stipulated in Rule 36 of the Rules of Procedure.
34. First, the Court notes that the Referral is submitted by the four Applicants before the Constitutional Court, although the Appellate Panel Decision AC-II-12-0050-A0001 applies only to the Applicant Aleksandar Đekić.
35. The Court considers that the Applicants have built their case on legal grounds, namely on erroneously determined factual situation in relation to the right of inheritance and the validity of the challenged decision No. 35/63 of the Commission for Land Consolidation of the Municipality of Prishtina, as well as on erroneous assessment of evidence by the regular courts.
36. The Court first observes that the Applicants were twice ordered to submit the decision on inheritance proving that they are the heirs of Tomić Aleksandar under whose name reads Decision No. 35/63 of the Commission for Land Consolidation of the Municipality of Prishtina.
37. The Court further notes that the Specialized Panel and the Appellate Panel explained why the other applicants cannot be included in the statement of claim of the Applicant Aleksandar Đekić, and that the Applicant Aleksandar Đekić was notified by the Appellate Panel that *“the failure to submit the decision will result in the rejection of the claim.”*
38. Finally, the Court notes that the Appellate Panel by Decision AC-II-12-0050-A0001 explained in detail the reasons for rejecting the claim as inadmissible emphasizing that *“...the evidence on inheritance right is a requirement for admissibility of the claim, when the claimants submit the claim for the right acquired by inheritance...”*
39. Based on the foregoing, the Court will not further review the Applicant’s allegations regarding the factual situation, because it is not the role of the Constitutional Court to determine whether the certain types of evidence is allowed, what evidence should be taken, nor to specify what evidence is acceptable and what is not. That is the role of the regular courts. The role of the Constitutional Court is to ascertain whether the regular courts’ proceedings were fair in their entirety, including the way the evidence was taken (see: Case

*Dukmedjian v. France*, Application no. 60495/00, paragraph 71, ECtHR Judgment of 31 January 2006)

40. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of the rights and freedoms guaranteed by the Constitution by the public authority, the Applicant must present a reasoned and a convincing argument.
41. The Court notes that the Applicants had the opportunity to present before the regular courts the factual and legal reasons for the resolution of dispute; their arguments were duly heard and examined by the Specialized Panel and the Appellate Panel; the proceedings taken as a whole were fair and the rendered decisions were reasoned in detail.
42. The Court further considers that the Applicants do not agree with the outcome of the proceedings before the regular courts. However, this fact cannot of itself raise an arguable claim of the violation of the right to fair and impartial trial (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21 no. 5503/02, ECtHR Judgment of 26 July 2005).
43. The Court considers that the Applicants did not substantiate allegation for the violation of their rights and did not explain how and why the decision of the Appellate Panel may have violated their constitutional rights; they only emphasized the there has been a violation of their constitutional rights. They did not provide any *prima facie* evidence which would indicate a violation of their constitutional rights (see *Trofimchuk v. Ukraine*, ECtHR, paragraph 50-55, Judgment no. 4241/03, of 28 October 2010).
44. In conclusion, the Court considers that the Applicants have not substantiated their allegations that the relevant proceedings have been in any way unfair or arbitrary and that the challenged decision violated their constitutional rights and freedoms guaranteed by the Constitution and the ECHR (see: *mutatis mutandis: Shub vs. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
45. Therefore, the Court considers that the admissibility requirements, as established in the Constitution, foreseen by the Law and as further specified in the Rule of Procedure have not been met.
46. Accordingly, the Court finds that the Applicants' Referral is inadmissible, as manifestly ill-founded on constitutional basis.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (1) and (7) of the Constitution, Article 48 of the Law Rules 36 (2) (a) and 56 of the Rules of Procedure, in the session held on 06 September 2017, unanimously

## DECIDES

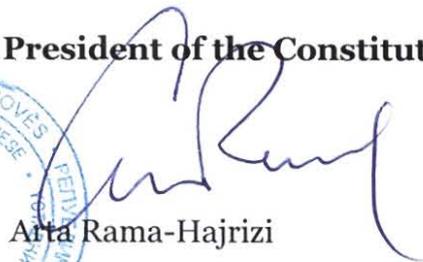
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

**Judge Rapporteur**



Bekim Sejdiu

**President of the Constitutional Court**



Arta Rama-Hajrizi