



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

Prishtina, on 23 December 2016
Ref. No.:RK1023/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI113/16

Applicants

Shukri Maxhuni and Gazmend Muqolli

Request for interpretation of Article 7 (Right to buy an apartment) of the Law No. 04/L-061 on Sale of Apartments in Which There is Tenure Right, of 12 January 2012

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Shukri Maxhuni and Gazmend Muqolli from Prishtina (hereinafter: the Applicants).

Challenged decision

2. The Applicants do not challenge any specific decision of a public authority.

Subject matter

3. The subject matter is the request for interpretation of Article 7 (Right to buy an apartment) of the Law No. 04/L-061 on Sale of Apartments in Which There is Tenure Right (hereinafter: the Law on Apartments), of 12 January 2012.

Legal basis

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

Proceedings before the Constitutional Court

5. On 15 September 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 October 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 25 October 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Basic Court in Prishtina.
8. On 16 November 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. From the case file it appears that, during the 1990s, the Public Housing Enterprise of Prishtina initiated the construction of residential buildings.
10. After 1999, without legal authorization, the Applicants occupied apartments of the Public Housing Enterprise.
11. At some point, in order to vacate these apartments of illegal occupants, the Public Housing Enterprise initiated enforcement proceedings with the Basic Court of Prishtina.
12. On 29 July 2016, the Basic Court in Prishtina, in accordance with Article 3 para. 5, and Articles 282 and 284, paras. 1 and 4, of the Law on Enforcement Procedure (Law No. 04/L-139), based on a Decision (E. no. 82/09) of 31

August 2009, issued a 'Conclusion' on implementation of the eviction of a number of these apartments by removing the occupants and their belongings.

13. The Conclusion (E. no. 82/09) of the Basic Court reads: „[...] on 29 August 2016 starting at 10.00, the Court will vacate and free from people and belongings the apartments: 1. No. 13; 2. No. 14; 3. No. 15; 4. No. 16; 5. No. 17 and 6. No. 18, which are located in Dardania neighborhood, building 9/4, entrance 1, third floor, which after being vacated and free from people and belongings, will be handed over under possession and free use to the enforcement creditor.“

Applicant's allegations

14. The Applicants allege that they moved into the apartments after 1999, that they have adapted these facilities by themselves by investing significant funds, and that they now have no place to go.
15. The Applicants exclusively and explicitly request the Court to interpret Article 7 (Right to buy an apartment) of the Law on Sale of Apartments. This Article provides that:

„Each holder of tenure right, namely user of the public or socially owned apartment, except in cases of Article 11 of this Law, shall submit a written request for purchasing an apartment.“

16. The Applicants also request the Court to answer the question, “Do the aforementioned tenants have the right to purchase the apartment in accordance with this Law?”

Assessment of the admissibility of the Referral

17. The Court first examines whether the Applicants have met the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
18. In this respect, the Court refers to Article 113.1 and 113.7 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.”

19. The Court further refers to Article 47.1 of the Law, which provides:

„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.”

20. Finally, the Court refers to Rule 36 (1) (a) of the Rules of Procedure, which states:

*“(1) The Court may only deal with Referrals if:
(a) the referral is filed by an authorized party,”*

21. As it was mentioned above, the Applicants request the interpretation of Article 7 (Right to buy an apartment) of the Law on Apartments, arguing that *“by applying this Article of the Law, they are deprived of the right to purchase the apartment, since they live there for a long period of time.”*
22. In this case, the Court notes that the Applicants do not allege any violation of their constitutional rights committed by the public authorities, as required by Article 113.7 of the Constitution and Article 47.1 of the Law.
23. The Court also notes that the Applicants did not provide any information regarding any legal or other proceedings that they have initiated in order to resolve their complaints, or with respect to their claim of the erroneous application of Article 7 of the Law on Sale of Apartments.
24. What the Applicants in fact request is an *„authentic interpretation“* of Article 7 of the Law on Sale of Apartments, because the Applicants allege that, as a result of the implementation of Article 7 by the competent authorities, they and other tenants are put in *“unfavorable and degrading position, both in economic and moral terms.”*
25. The Court recalls that only those authorities referred to in paragraphs 2, 3, 4, 5, and 8 of Article 113 of the Constitution are authorized parties to request the constitutional review of a Law, or of specific provisions of a Law.
26. Therefore, the Court considers that the Applicants are not an authorized party to request the interpretation of Article 7 of the Law. The interpretation of the Law is a question of legality and as such is a matter for the regular courts, unless the interpretation of the courts in the specific circumstances of the case leads to a manifestly arbitrary outcome. Accordingly, the Referral is to be rejected as inadmissible.
27. In conclusion, based on the foregoing, the Court finds that the Applicants are not authorized parties and in accordance with Article 113.7 of the Constitution, Article 47.1 of the Law and Rule 36 (1) (a) of the Rules of Procedure, the Referral is to be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo in accordance with Article 113.7 of the Constitution, and Rule 36 (1) (a) of the Rules of Procedure, in the session held 16 November 2016, unanimously

DECIDES

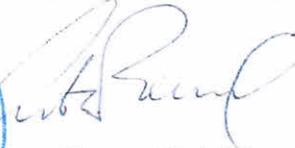
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Arta Rama-Hajrizi

