



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 17 July 2017
Ref. No.:RK 1105/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI25/16

Applicants

Veselin Milošević and Vesna Milošević

**Constitutional review of Decision AC-I-13-0127 of the Appellate Panel of
the Special Chamber of the Supreme Court on Privatization Agency of
Kosovo Related Matters, of 1 October 2015**

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

Applicants

1. The Referral was submitted by Veselin Milošević and Vesna Milošević from Prishtina (hereinafter: the Applicants), who are represented by Basri Jupolli, a lawyer from Prishtina.

Challenged decision

2. The challenged decision is Decision AC-I-13-0127, of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 1 October 2015, which was served on the Applicants on 21 October 2015.

Subject matter

3. The subject matter is the constitutional review of Decision AC-I-13-0127, of the Appellate Panel, of 1 October 2015, which according to Applicants' allegations, violated Article 22 [Direct Applicability of International Agreements and Instruments], and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of 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: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 4 February 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 March 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur, and the Review Panel, composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 30 March 2016, the Court notified the Applicants about the registration of the Referral and requested the Applicants' representative to submit a power of attorney, based on which he represents the Applicant Vesna Milošević. On the same date, the Court notified and sent a copy of the Referral to the Appellate Panel.
8. On 21 April 2016, the Applicants' representative submitted to the Court a power of attorney, by which he represents the Applicant Vesna Milošević.
9. On 1 December 2016, the Court requested the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) to submit Decision SCA-08-037 of 27 June 2008, of the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters (hereinafter: SCSC).
10. On 2 December 2016, the SCSC submitted to the Court the Decision of the Specialized Panel of the SCSC (hereinafter: the Specialized Panel) SCA-08-0037 of 28 June 2013.

11. On 6 December 2016, the SCSC submitted to the Court the SCSC Decision of SCSC-o8-037 of 27 June 2008.
12. On 30 May 2017, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 19 January 2006, the Applicants filed a claim with the Municipal Court in Prishtina, requesting the annulment of the sale-purchase agreement (Ov. No. 69/62), of 12 January 1962, concluded between their legal predecessor, the deceased D. M., and the Socially Owned Enterprise PIK "Kosovo Export" (hereinafter: the Socially Owned Enterprise), as invalid. The Applicants requested the Municipal Court, *"to oblige the respondent to return the possession of their property, the cadastral parcels No. 1339, 1520/1, 1877/12 registered on the possession list No. 260 CZ Llapna Sellë and cadastral parcel No. 222 Çagllavica CZ."*
14. The representative of the Socially Owned Enterprise participated in the court proceedings before the Municipal Court in Prishtina as a respondent party, and requested that the claim be rejected as ungrounded.
15. On 26 June 2007, the Municipal Court in Prishtina rendered Judgment C. No. 53/06, approved the claim of the Applicant and declared invalid the sale-purchase agreement Ov. No. 69/62 of 12 January 1962.
16. On 9 July 2007, the Judgment of the Municipal Court was served on the representative of the Socially Owned Enterprise, who on 23 July 2007, filed an appeal against the Judgment. The representative then withdrew the appeal on 28 September 2007.
17. On 11 January 2008, the Kosovo Trust Agency (hereinafter: the KTA) was notified that a proceedings had been conducted related to socially owned property which is under its administration.
18. On 11 March 2008, the KTA filed a complaint with the SCSC, noting that the Municipal Court in Prishtina acted without jurisdiction, because the SCSC had exclusive jurisdiction over the claims against socially owned enterprises and, therefore, the judgment C. No. 53/06 of the Municipal Court is invalid.
19. On 27 June 2008, the Specialized Panel of the SCSC, by Decision SCA-o8-037, approved the appeal of the KTA as timely, with the reasoning that:

"Although in this case the KTA is not a party to the proceedings, the KTA as an administrator of socially and publicly owned property should have been notified regarding the challenged judgment in accordance with Article 5 and 6 of the KTA Regulation 2005-18. Taking into account that the KTA has received the notification about the legal issue through a letter of the Municipal Court in Prishtina dated 11.01.2008, the Special Chamber

considers that this is the date when the period of 2 months for filing a complaint begins to run [...].”

20. On 15 June 2008, the Law no. 03/L-067 on Privatization Agency of Kosovo entered into force and the Privatization Agency of Kosovo (hereinafter: the PAK) was established as a legal successor to the KTA.
21. On 1 January 2012, the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Law on the Special Chamber) entered into force, which established the Special Chamber as the legal successor of the SCSC. In accordance with this Law, the parties were able to comment on the change of Article 4.5.1 of the Law on the Special Chamber in relation to this case.
22. The Applicants submitted their appeal to the Specialized Panel stating that the appeal of the KTA, now the PAK, was filed out of time.
23. On 28 June 2013, the Specialized Panel rendered Decision SCA-08-0037, which declared the KTA, now PAK, appeal of 11 March 2008 against the decision of the Municipal Court in Prishtina as out of time. The Specialized Panel reasoned that, *“The challenged judgment was sent to the respondent, the SOE on 23.07.2007. The KTA complaint was filed on 11.03.2008. The complaint was filed after the deadline provided for Socially Owned Enterprises, respectively for KTA. The Judgment of the Municipal Court became final at the moment when the remedy was sought.”*
24. The PAK filed an appeal with the Appellate Panel against this Decision SCA-08-0037 of the Specialized Panel of 28 June 2013.
25. On 1 October 2015, the Appellate Panel by Decision (AC-I-13-0127) approved the appeal and annulled the Decision (SCA-08-0037, of 28 June 2013), of the Specialized Panel. In addition, the Appellate Panel declared invalid the Judgment (C. No. 53/06), of the Municipal Court in Prishtina of 26 June 2007, and remanded the case to the Specialized Panel for further proceedings.

Applicant’s allegations

26. The Applicants allege that the decisions of the regular courts violated Article 22 [Direct Applicability of International Agreements and Instruments] and Article 46 [Protection of Property] of the Constitution, as well as Article 6 [Right to a fair trial] of the ECHR.
27. The Applicants argue that, *“the retroactive repeal of the final Judgment of the Municipal Court in Prishtina, in case C. No. 53/06, of 26 June 2007 has occurred. [...] The Special Chamber, with its Decision in case AC-01-13-0127, dated 01 December 2015, caused legal uncertainty, by seriously violating the fundamental human rights and freedoms of citizens.”*
28. The Applicants conclude by requesting the Court to annul Decision AC-I-13-0127 of the Appellate Panel of the Special Chamber, of 1 October 2015.

Admissibility of the Referral

29. In order to adjudicate the Applicants' Referral, the Court should examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

30. In this case the Court refers to Article 113.7 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."

31. In addition, Article 47.2 of the Law, stipulates that:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

32. Furthermore, Rule 36 (1) (b) of the Rule of Procedure provides that:

"The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".

33. The Court notes that the Applicants consider that the decisions of the regular courts violated the rights and freedoms guaranteed by Articles 22 and 46 of the Constitution and Article 6 of ECHR.

34. The Court notes in the present case there are four decisions of the competent courts, and that in accordance with its content, character and subject, they may be classified into two categories.

35. Judgment C. No. 53/06, of the Municipal Court of 26 June 2007 belongs to the first category, in which the Court exclusively dealt with the subject of the property claim, which, pursuant to Article 5.1 of UNMIK Regulation 2002/12, is treated as a social property.

36. The three subsequent decisions of the panels of the Special Chamber belong to the second category, which deal exclusively with the procedural question of the time limits for filing the complaint of the KTA.

37. The Court notes that the preliminary question before the Specialized Panel in Decision SCA-08-037 of 27 June 2008, was whether the complaint of the KTA against the Judgment of the Municipal Court was submitted in time.

38. In this regard, the Court notes that the Specialized Panel approved the KTA complaint of 11 March 2008 as timely, pursuant to Article 56.1 of the Administrative Instruction 2006/17 which states that, *"the complaints should be filed with the Special Chamber within a deadline of 2 months after the decision was served on the parties to the proceedings."*

39. The Court notes that the Specialized Panel based its decision on the specific circumstances of the case, namely that the KTA was never informed about the proceedings before the Municipal Court, despite the fact that the KTA, is authorized, according to UNMIK Regulation 2002/12 (On the Establishment of the Kosovo Trust Agency), to be a party to the proceedings because the original case concerned the socially owned property. Therefore, the Specialized Panel found that the time limits for filing the complaints, pursuant to Article 56.1 of the administrative instruction could not run.

40. The Court further notes that the KTA was notified about the judgment of the Municipal Court only on 11 January 2008. According to the reasoning in the decision of the Specialized Panel, the deadline of 2 months for the KTA to file an appeal formally began to run from the date the KTA was informed, and stated that:

“Taking into account that the KTA received the notification about this legal issue through a letter dated 11.01.2008 of the Municipal Court in Prishtina, the Special Chamber considers that this is the date when the deadline of 2 months for filing appeal begins to run. The KTA respected this time limit and it filed appeal on 11.03.2008, two months after the date...”

41. Furthermore, the Court notes that, in the second Decision SCA-08-0037 of 28 June 2013, the Specialized Panel annulled the decision of the Specialized Panel of 27 June 2008, basing its decision on the fact that the judgment of the Municipal Court was sent on 23.07.2007 to the Socially Owned Enterprise, which the KTA should have known about. Therefore, the Specialized Panel reasoned that the deadline for filing the appeal started to run on the same date, *“since the Special Chamber considers the relationship between the SOE and PAK, as an internal matter.”*

42. The Court further notes that the Appellate Panel in its decision finally resolved the subject of the dispute and removed any ambiguity regarding the time limits, and thus concluded that the appeal of the KTA, now PAK, of 11 March 2008 was submitted on time. Therefore, the Appellate Panel declared the Judgment (C. No. 53/06) of the Municipal Court in Prishtina of 26 June 2007 invalid, and remanded the case on the substance of the disputed property to the respective Specialized Panel for further proceedings.

43. Accordingly, the Court considers that the issue related to the deadlines whether the KTA, now PAK, appeal was filed within the time limit or not, was concluded by a final decision of the Appellate Panel, and that the issue of confirmation of the rights to the disputed property was remanded to the Specialized Panel. Thus, the proceedings regarding the substantive issue of the property rights is currently pending.

44. The Court notes that the Applicants' allege that their property rights have been violated by the decision of the Appellate Panel. However, the Court notes that the proceedings before the Appellate panel only concerned a procedural

question of deadlines, and, in fact, the Applicants' property rights claims have not yet been adjudicated.

45. Based on the fact that the Applicants' case is still pending in the regular court proceedings before the Specialized Panel for retrial, the Court considers that the Applicants' Referral is premature.
46. The Court recalls that the rationale for the exhaustion of effective legal remedies, as in the present case, is to afford the regular courts the opportunity to remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order provides an effective legal remedy against the violation of constitutional rights (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
47. The principle of subsidiarity requires that the Applicants exhaust all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of fundamental rights (See Resolution on case KI07/09, *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional review of Judgment Pkl. no. 61/07, of 24 December 2008, para. 18).
48. Therefore, the Court concludes that the Applicant's Referral is premature.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 47 of the Law, and Rule 36 (b) of the Rules of Procedure, on 30 May 2017, 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

Selvetë Gërxhaliu-Krasniqi

President of the Constitutional Court

Arta Rama-Hajrizi

