



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

Prishtina, 18 July 2014
Ref.no.:RK677/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI38/14

Applicant

Gani Balaj

Constitutional review of Judgment AC-II-12-0165 of the Special Chamber of the Supreme Court of the Republic of Kosovo, dated 10 October 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Gani Balaj, residing in the village Irzniq, Municipality of Deçan (hereinafter, the Applicant) and represented by Mr. Hasan Shala, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges Judgment AC-II-12-0165 of the Special Chamber of the Supreme Court of the Republic of Kosovo (hereinafter, the “Special Chamber”) of 10 October 2013, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly “[...] has violated the fundamental rights guaranteed with the Constitution and with the European Convention on Human Rights (Article 3 of the Convention).”

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 3 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 1 April 2014, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 7 May 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit the following documents:
 - a. Power of attorney for Mr. Hasan Shala;
 - b. The receipt letter for the date of service for Judgment AC-II-12-0165 of the Special Chamber;
 - c. Judgment SCC-07-0425 of Special Chamber of 10 December 2007.
8. On 7 May 2014, the Court sent a copy of the Referral to the Special Chamber and the Privatization Agency of Kosovo (hereinafter, PAK).
9. On 22 May 2014, the Applicant replied to the Court and submitted the power of attorney and Judgment SCC-07-0425 of Special Chamber of 20 November 2007. However, the Applicant did not provide the Court with the letter of receipt for the date of service of Judgment AC-II-12-0165 because this is with the Special Chamber.
10. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

11. On the same date, the President of the Court, by Decision No. KSH. KI38/14, replaced Judge Kadri Kryeziu with Judge Ivan Čukalović as a member of the Review Panel.
12. On 26 June 2014, 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

13. On an unspecified date, the Applicant had filed a claim with the Special Chamber to confirm his ownership to a property.
14. On 10 December 2007, the Special Chamber (Decision SCC-07-0425) referred the case to the Municipal Court in Deçan. This decision was not submitted by the Applicant.
15. On 23 March 2009, the Municipal Court in Deçan (Judgment C. no. 93/07) rejected as unfounded the Applicant's claim to confirm his ownership to a property. The Municipal Court held that "*Article 33 of the Law on Basic Property Relations provides that on the basis of legal work the property right over a real estate shall be acquired by registration into the cadastral books or in some other appropriate way that is prescribed by law [...]*". It further states that "*[...] The real estate, the subject matter, is recorded in the respondent's name since 1956, while the claimant even after the air-recording, assuming property rights over the real estate that is subject of this matter, had sufficient time to challenge the air-recording, which he didn't do within the deadline.*" The Municipal Court concluded that "*Based on the determined factual situation, [...] the claimant's statement of claim is unfounded [...]*." The Applicant complained against this judgment to the Special Chamber.
16. On 10 October 2013, the Special Chamber (Judgment AC-II-12-0165) rejected as unfounded the Applicant's appeal and upheld the judgment of the Municipal Court of Deçan. The Special Chamber held that:

"The Panel of Appeals [Special Chamber] considers that the Judgment of the Municipal Court in Deçan does not include any procedural violation, alleged by the claimant, therefore, as such it is fair and founded in law and the Panel of Appeals confirms it. The Court, by this Judgment, draw a complete conclusion of the factual situation, from what was provided by the claimant's statement of claim and other submissions, because the burden of proof falls on the claimant pursuant to Article 7 of LCP [Law on Contested Procedure].

The claimant, in his appeal, didn't offer any convincing evidence related to his objections, apart from paraphrasing what was said in the statement of claim.

The Court, by this Judgment, confirmed that the contested property is socially owned for a long period, meaning that the respondent is the owner of this property. If there was a violation of the right to property, as the

claimant alleges, from the respondent, then the claimant could submit it before the judicial authorities even earlier, but he never did this, until he files the claim on October 18th 2007. This silence in regards to potential obstacles, results in the loss of possibility to claim a right, even if it exists. Pursuant to Article 268 of the Law on Joined Labor (Official Gazette SFRY [Socialist Federal Republic of Yugoslavia] 53/65), "if an immovable property became public property without legal grounds, a claim is admissible for its reinstatement within 5 years, from the date it was acknowledged, but not more than 10 years from that date".

Applicant's Allegations

17. *The Applicant alleges that "Agricultural Cooperative "Perparimi" [...] has arbitrarily held this property and as such violated Article 9 and 10 of the Laws of SFRY No. 6/1980, applicable laws pursuant to UNMIK Regulation No. 1999/24 of 12 December 1999."*
18. *The Applicant further claims that "[...] based on Law No.6/1980 of SFRY on Basic Property Relations, Article 37 provides "The right for lodging an appeal for protection of the right to property doesn't become obsolete". Based on this the Applicant considers that the property is occupied arbitrarily by the Municipality and that this law is violated without any legal grounds.*
19. *Moreover, the Applicant alleges that "The Second Instance Court, the Panel of the Special Chamber repeated the violation of Law just like the First Instance Court, because without holding a hearing and without requesting additional evidence from the claiming party, rendered a decision on this matter, by not giving the opportunity to the claimant to entirely argument his statement of claim before the Panel of the Special Chamber of the Supreme Court of Kosovo. The Judgment of the Special Chamber as a Second Instance Court is contradictory to its own reasoning when it legitimates and confirms the challenged Judgment by violating the same Law as the First Instance Court in Deçan."*

Admissibility of the Referral

20. *The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.*
21. *In this respect, the Court refers to Article 49 of the Law, which establishes 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. [...]"*
22. *In addition, Rule 36 (1) b) of the Rules of Procedure foresees that "(1) The Court may only deal with Referrals if: (b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant."*

23. The Court notes that the final judgment, AC-II-12-0165, of the Special Chamber was taken on 10 October 2013 and was served on the Applicant on an unspecified date, whereas the Applicant filed the Referral with the Court on 3 March 2014. The Applicant has failed to submit to this Court evidence showing when he was served with the judgment of the Special Chamber. Thus, this Court considers the date of 10 October 2013 of the publication of the decision as the date of service on the Applicant.
24. Therefore, the Court concludes that the Referral is out of time and, pursuant to Article 49 of the Law and Rule 36 (1) b), it must be rejected as inadmissible,.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) b) and Rule 56 (2) of the Rules of Procedure, on 26 June 2014, unanimously

DECIDES

- I. TO REJECT the Referral as 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;
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani