



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

Prishtina, 12. December 2011
No. ref.: RK170/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI-84/11

Applicant

Rexhep Ademi

**Constitutional review of the reconsideration decision of the Housing and
Property Claims Commission HPCC/REC/101/2008 of 19 June 2008**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Rexhep Ademi from Mitrovica, Mitrovica Municipality.

Challenged Decision

2. The Applicant challenges the reconsideration decision of the Housing and Property Claims Commission (hereinafter: HPCC) HPCC/REC/101/2008 of 19 June 2008, by which was upheld the decision HPCC/d/108/2004/C of 13 February 2004.

Subject Matter

3. The subject matter is the reconsideration decision HPCC/REC/101/2008 of 19 June 2008, which to Applicant's allegations violated Article 22 [Direct Application of International Agreements and Instruments] of the Constitution of the Republic of Kosovo and the European Social Charter of 1996.

Legal Basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 16 December 2008 (hereinafter: the "Law") and Rule 56(2) of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 21 June 2011, the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 July 2011, the Constitutional Court informed Mr. Rexhep Ademi and the Kosovo Property Agency (hereinafter: KPA) which is the legal successor of HPCC, that the proceedings on review of constitutionality in case No. KI-84-11 have been initiated.
7. On 29 August 2011, the KPA in its reply informed the Court in details about the proceedings on decision HPCC/REC/101/2008 of 19 June 2008.
8. On 13 October 2011, the Constitutional Court requested from KPA additional documentation with evidence when the decision HPCC/REC/101/2008 of 19 June 2008, was served to the Applicant.
9. On 17 October 2011, KPA submitted to the Constitutional Court a copy of the return receipt proving that, on 31 March 2011, the Applicant has received the decision HPCC/REC/101/2008 of 19 June 2008.
10. On 21 November 2011, after deliberating on the report of Judge Ivana Čukalović, the Review Panel composed of Judges Almiro Rodrigues (Presiding), Dr. Gjyljeta Mushkolaj and Dr. Iliriana Islami, proposed to the full Court to reject the Referral as inadmissible.

Summary of the Facts

11. The Commission for Housing claims of the Construction Material Industry in Zvečan (hereinafter: CMIZ) by its decision, of 26 March 1980, on the temporary use of the apartment No.220, gave to the Applicant in a temporary use the apartment located in premises of the old Directorate in Mitrovica.

12. According to the Applicant's allegations, he lived in that apartment with other 6 family members „till end of August 1998, when paramilitary Serbian forces, using force, evicted him from the flat...“.
13. After the war he returned to the apartment, but before the HPCC were initiated proceedings on claim DS309975 submitted by V.G., requesting to get back in possession the flat in Gavril Principi Street 231.
14. By decision HPCC/D/108/2004/C of 13 February 2004 was confirmed the right to the apartment possession in favor of V.G., this decision was served to the Applicant on 23 November 2007.
15. The Applicant objected the decision HPCC/D/108/2004/C of 13 February 2004.
16. In the reconsideration proceedings, by decision HPCC/REC/101/2008 of 19 June 2008, was upheld the decision HPCC/d/108/2004/C of 13 February 2004, by which the right to the apartment possession was determined in favor of V. G.
17. The apartment has remained in possession of the Applicant, in which according to the Applicant's allegations, *“he lives for continuous 18 years”*, for what he has the confirmation of the Independent Organ of the Directorate for Housing and Property.
18. The decision HPCC/REC/101/2008 of 19 June 2008 becomes final, what is indicated in the instruction on legal remedies of the UNMIK Regulation No. 23/1999 Article 2.7 :

Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.
19. Later on, the Applicant concluded a contract on leasing the immovable property from the KPA, on 27 May 2011, the KPA sent out the last warning on eviction from the leased flat, due to a failure to meet the obligations of leasing contract (non-payment of rent), in the last warning was indicated that if he fails to meet the obligations stipulated in the lease contract by 2 June 2011, the KPA will be forced to terminate the leasing contract.
20. On 15 June 2011, the KPA due to non-payment of rent evicted the Applicant and his family from the flat concerned.

Applicant's Allegations

21. The Applicant believes that his rights as a citizen of the Republic of Kosovo have been violated by the HPCC and its legal successors, KPA, that the decisions taken are inconsistent with the Constitution of Kosovo and international documents on human rights.
22. The Applicant considers that the KPA's decision is inconsistent with Article 22 of the Constitution, which provides the Direct Applicability of the International Agreements and Instruments, and which, in case of a conflict, have priority over provisions of laws and other acts of public of public institutions, so in this case the European Social Charter of 1996 has been violated.

Assessment of the admissibility of the Referral

23. The Applicant alleges that Article 22. (Direct Applicability of the International Agreements and Instruments) of the Constitution of Kosovo and the European Social Charter of 1996 are basis for his Referral.
24. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo stipulates:

„ 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.“
25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).
26. The Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see, Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of Application No. 53363/99 of 31 May 2005). The Applicant does not emphasize in what manner Article 22 and the European Social Charter of 1996 sustain his Referral, as provided by Article 113.7 of the Constitution and Article 48 of the Law.
27. In the present case, the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Housing and Property Claims Commission, and that twice. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
28. In conclusion, the Referral does not meet the admissibility criteria. He failed to provide evidence that the challenged decision, allegedly, violated his rights and freedoms.
29. It follows that, the Referral is manifestly ill-grounded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: „ *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b)when the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.*

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 56.2 and Rule 36 (2b) of the Rules of Procedure, in session held on 25 November 2011, unanimously

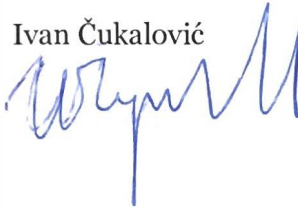
DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

