



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 5 May 2017
Ref. No.: RK1060/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI02/17

Applicant

Fadil Aziri

Constitutional review of Judgment (GSK-KPA-A-015/2014 of 20 April 2016) of the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo

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 Fadil Aziri from the village Nëntë Jugoviq, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment (GSK-KPA-A-015/2014 of 20 April 2016) of the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo (hereinafter: the KPA Appeals Panel) which was served on him on 22 September 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which is allegedly “*unlawful*” and contrary to Article 3 of UNMIK Regulation No. 2006/50. The Applicant does not further reason what constitutional provisions and what constitutionally guaranteed rights have been violated.

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 10 January 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 27 February 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu Krasniqi.
7. On 06 March 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the KPA Appeals Panel.
8. On 05 April 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 21 August 2000, the Applicant as a buyer entered into a sale-purchase agreement of immovable property (cadastral plot No. 193 and 194/6) with Dragoljub Stamenković as a seller with lawyer Januz Murati.
10. On 11 December 2005, the Applicant, as a buyer, entered into a sale-purchase agreement of immovable property (cadastral parcel No. 194/1, 2, 3) with Spasoje Stamenković, as a seller, with lawyer Januz Murati.
11. Both of these contracts are not certified by the Basic court, and the cadastral plots had a larger number of the co-owners of the Stamenković family members.

12. On 14 March 2007, Dragana Stamenković (one of the co-owners of the aforementioned cadastral plots) filed a claim (No. 21215) for confirmation of the property rights with the Kosovo Property Agency, whereby she requested the repossession of $\frac{1}{4}$ of the ideal part of the plot 194/1 in surface area of 96 m² with auxiliary facilities, the yard in a surface area of 5.00 are and an orchard of the second class in a surface area of 5.54 are, located in Nëntë Jugoviq in Prishtina (hereinafter: the disputed property).
13. As an evidence that she is the owner of the disputed property, Dragana Stamenković in the appeal to the Kosovo Property Agency (hereinafter: KPA) submitted the following documents:
 - Possession List No. 109, of 23 March 2006, issued by the Directorate for Geodesy - Center for Immovable Property in the Municipality of Prishtina, where the grandmother of Dragana Stamenković is mentioned as the owner of $\frac{1}{4}$ of the ideal part of the disputed property;
 - Decision on inheritance O. no. 196/96 of 17 April 2002 issued by the Municipal Court in Prishtina, which states that Dragana Stamenkovic inherited $\frac{1}{7}$ of the ideal part of the total inheritance;
 - Certificate of property rights no. 011/095-43684 of 4 December 2012, issued by the Cadastral Office in Prishtina, where Dragana Stamenković is mentioned as a co-owner of $\frac{1}{7}$ of the ideal part of the disputed property.
14. The Applicant in this dispute before the KPA appeared as a responding party noting that he has not usurped the disputed property, but that he acquired it by the above-mentioned agreements of 2000 and 2005.
15. In support of his claims, the Applicant attached a claim filed with the Municipal Court in Prishtina of 26 January 2011, by which he requested the confirmation of ownership over the plots 193, 194/1, 2, 3; 6.
16. On 11 June 2013, the Commission of the Kosovo Property Agency by (Decision KPCC/D/R/205/2013) decided to approve the claim of Dragana Stamenković on the grounds that she is the owner of $\frac{1}{7}$ of the ideal part of the disputed property, based on the submitted evidence, and in the absence of valid evidence submitted by the responding party (the Applicant).
17. On 23 October 2013, Decision KPCC/D/R/205/2013, of the Commission of the Kosovo Property Agency (hereinafter KPCC) was served on the Applicant.
18. On 19 November 2013, the Applicant filed an appeal against Decision KPCC/D/R/205/2013, challenging the jurisdiction of the KPA stating that *"the decisions of KPA are exclusively related to a specific time period from 27.2.1998 until 20.06.1999."*
19. The Applicant in his appeal stated that the loss of the property is not a result of the armed conflict in the period 1998-99. The Applicant claimed that Dragana Stamenković lost the possession over the required property because of the

performed transaction with the sale-purchase of 2005, initiated by Spasoje Stamenković.

20. The Applicant further claimed that he knew that Spasoje Stamenković is not the only owner of the claimed property, but he considered him as such. He did not dispute the ideal part of Dragana Stamenković. The Applicant also stated that he filed a claim before the regular courts, by which he requested the confirmation of ownership over the claimed property.
21. On 14 July 2014, Dragana Stamenković submitted the reply to the appeal, stating that the Applicant's allegations in the appeal *"that he bought the requested property are not true, because he cannot prove that he bought it from the co-owners, since Spasoje and Dragoljub Stamenkovic were not the only co-owners of the property."*
22. On 20 April 2016, the KPA Appeals Panel (Judgment GSK-KPA-A-015/2014) rejected the appeal of the Applicant as ungrounded and upheld Decision KPCC/D/R/205/2013 of 11 June 2013, by reasoning that:

"...Contracts on transferring the rights over the immovable property between the holders of the property right will be compiled in written form; the signatures of the contracted parties will be confirmed by the court", it follows that the contracts which were presented by the appellant do not fulfill the legal criteria which is stipulated by this law, therefore, they do not produce legal effect for the parties. However, by the confirmed evidence it results that in the contract of 2005 which is related to the claimed property, the seller was not the owner of the entire property, but only a part of it. Therefore, based on Law on Basic Property Relations (Official Gazette no. 6/80) Article 14, paragraph 2, which stipulates that the sale of immovable property that is owned by some co-owners is valid only if the consent of the co-owners exists. Further on, the appellant was aware that the seller Spasoje Stamenkovic, in the contract entered into in 2005, was not the only owner wherein the intent of the contract in question was the transfer of the whole parcel. Consequently, the contract is not valid and does not affect the right of the appellant in the appeal over the requested property. "

Applicant's allegations

23. The Applicant first describes the factual situation and lists a number of violations of the laws and of UNMIK Regulation No. 2006/50, but does not connect them with the constitutional provisions and does not explain what constitutional rights have been violated.
24. Basically, the Applicant emphasizes the same allegations he raised in the appeal before the KPA Appeals Panel alleging that: the KPCC had no jurisdiction to decide this dispute, because its jurisdiction is limited to the period from 27 February 1998 to 20 June in 1999; that Dragana Stamenković did not lose a property right in the abovementioned period; that because of the abovementioned reason the KPA Appeals Panel had no jurisdiction to decide the dispute; that he acquired the ownership right under a contracts in 2000 and

2005, respectively; that the Applicant from that time is in the possession and use of the disputed plot; that the Applicant cannot be called an usurper in any way, but the latter paid for this property the amount of € 33,000.

25. In support of his claims the Applicant further alleges that Dragana Stamenković, stated herself *“that she lost the possession of property due to the armed conflict of 1998/1999, by noting the date of 28 June 1999 as the date when she lost the property”*. The Applicant, further, concludes, that if it is true *“that the property was lost on 28 June 1999, then it follows that it was after 20 June, while the jurisdiction of the KPA to decide is exactly for the period from 27 February 1998 until 20 June 1999”*
26. The Applicant considers that *“Kosovo Property Agency (KPA), more accurately the Kosovo Property Claims Commission, committed legal and constitutional violations with Decision KPCC/D/R/205/20013, of 11 June 2013; and to provide an answer whether it has jurisdiction to decide upon claims for lost property before or after the period from 27 February 1998 until 20 June 1999.”*
27. Finally, the Applicant requests the Court *“to abrogate - repeal Judgment GSP-KPA-A-015/2014, of the Supreme Court of Kosovo, of 20 April 2016, as well as Decision KPCC/D/R/205/2013, of the Kosovo Property Claims Commission, of 11 June 2013, and to declare them as having no jurisdiction, while to remand the case to the Basic Court as a court having subject matter and territorial jurisdiction, since claim C. No. 278/11 has been filed and it should be joined to this case for deciding based on merit.”*

Admissibility of Referral

28. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and in the Rules of Procedure.
29. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

*“(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.”*
30. The Court further refers to Article 48 [Accuracy of the 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”.
31. Furthermore, the Court takes into account Rule 36 (1) d) and (2) a) of the Rules of Procedure, which foresees:

(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.

32. In this case, the Court considers that the Applicant has met the procedural requirements of Article 113.7 of the Constitution. However, to determine the admissibility of the Referral, the Court should further assess whether the Applicant has fulfilled the requirements of Article 48 of the Law and the admissibility requirements established in Rule 36 of the Rules of Procedure.
33. The Court considers that the Applicant did build his case on legal basis, namely on erroneous interpretation of the relevant laws and UNMIK Regulation No. 2006/50 by the KPCC and the KPA Appeals Panel.
34. The Court notes that the Applicant merely reiterates the allegations raised in the appeal proceedings before the KPA Appeals Panel related to factual situation and jurisdiction of the KPCC and the KPA Appeals Panel.
35. The Court further notes that (Decision KPCC/D/R/205/2013) of the KPCC and (Judgment GSK-KPA-A-015/2014) of KPA Appeals Panel explained in detail the factual situation; this decision reasons why the contracts which the Applicant concluded with some co-owners are informal; alleges that the law required that they be in writing and certified by the court to produce legal effect.
36. Finally, these decisions explain the extent to which the contracts are valid, namely that they apply only to those co-owners who signed the contracts and cannot produce legal effect to the parties, namely co-owners who have not signed these agreements, and in the present case is the owner of the disputed property.
37. From the above, the Court will not further consider 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).
38. The Court further reviewed the Applicant's claims regarding the jurisdiction of the KPCC and the KPA Appeals Panel to decide on the merits on the disputed property and the Court here refers to Article 3.1 of UNMIK Regulation No. 2006/50, which regarding the jurisdiction provides as it follows:

“3.1 The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:

- (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and*
- (b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property.”*

39. Regarding these Applicant's allegations, the Court notes that the period *“between 27 February 1998 and 20 June 1999”* 'which the Applicant erroneously interpreted as a period of jurisdiction, does not constitute a period that determines the jurisdiction of the KPCC and the KPA Appeals Panel to decide on the merits, but determines the time that is considered to be the period of the armed conflicts.
40. The exclusive jurisdiction of the KPCC and the KPA Appeals Panel is defined for all the claims listed in paragraph (a) and (b) that result from *“circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.”* The KPCC and the KPA Appeals Panel determine its jurisdiction in accordance with the above-mentioned circumstances in each individual case.
41. The Court reiterates that it is not its task to deal with errors of facts or law allegedly committed by the regular courts when assessing 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 his constitutional rights and freedoms protected by the Constitution by the public authority, the Applicant must present a reasoned allegation and a convincing argument.
42. In addition, the Court also reiterates that the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, and not to deal with the interpretation and application of the domestic law, this is the role of the regular courts (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
43. The Court considers that the Applicant had the opportunity to present before the regular courts the material and legal reasons for the resolution of the dispute; his arguments were duly heard and duly examined by the KPCC and the KPA Appeals Panel; the proceedings viewed in entirety were fair and the decisions rendered were examined in detail.

44. The Court further notes that the Applicant disagrees with the outcome of the proceedings before the regular courts. However, the mere disagreement of the Applicant with the outcome of the proceedings conducted by the regular courts cannot of itself raise an arguable claim for breach of right to fair and impartial trial (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, paragraph 21, ECtHR, Judgment of 26 July 2005).
45. The Court notes that the Applicant did not accurately and specifically state violation of his rights and did not explain how and why the KPA Appeals Panel may have violated his constitutional rights; he only emphasized the there has been a violation of his constitutional rights. He did not provide any *prima facie* evidence which would indicate a violation of his constitutional rights (see *Trofimchuk v. Ukraine*, ECtHR, paragraph 50-55, Judgment no. 4241/03, of 28 October 2010).
46. The Court considers that the Applicant has not substantiated the allegations that the relevant proceedings have been in any way unfair or arbitrary, and that the challenged decision violated his constitutional rights and freedoms guaranteed by the Constitution and the ECHR (see: *mutatis mutandis: Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
47. Therefore, the Court considers that the admissibility requirements, as established in the Constitution, further specified in the Law and foreseen in the Rule of Procedure, have not been meet.
48. Therefore, the Court concludes that his Referral is inadmissible, as manifestly ill-founded on constitutional basis.

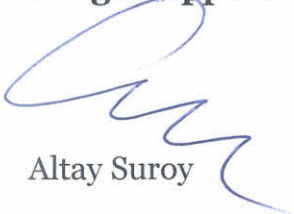
FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (2) a) and 56 of the Rules of Procedure, on its session held on 05 April 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


Altay Suroy



President of the Constitutional Court


Arta Rama-Hajrizi