



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

Prishtina, on 17 May 2016
Ref. no.:RK942/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI118/15

Applicant

Dragiša Stojković

**Constitutional review of
Judgment GSK-KPA-A-129/13 of the Supreme Court of Kosovo
Kosovo Property Agency Appeals Panel,
of 3 June 2015**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan Judge
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 is submitted by Mr. Dragiša Stojković, with residence in the town of Smederevo, in Serbia (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment GSK-KPA-A-129/13 of the Supreme Court of Kosovo - Kosovo Property Agency Appeals Panel (hereinafter, the Appeals Panel), of 3 June 2015, which rejected as ungrounded the Applicant's appeal filed against the Decision KPCC/D/A/180/2012 of the Kosovo Property Claims Commission within the Kosovo Property Agency (hereinafter, the KPCC), of 14 December 2012.
3. The challenged Judgment was served on the Applicant on 30 June 2015.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Article 5 [Languages] 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, the ECHR).

Legal basis

5. 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

6. On 22 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 14 October 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 2 November 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Appeals Panel.
9. On 12 April 2016, the Review Panel, after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 11 January 2007, the Applicant requested to Kosovo Property Agency (hereinafter, KPA) the confirmation of the property right of his mother and repossession of a land parcel in the village Petrova, municipality of Prizren.
11. On 14 December 2012, the KPCC (Group Decision KPCC/D/A/180/2012) rejected the Applicant's claim. The KPCC further concluded that the Applicant failed to show that the claim involves circumstances directly related to or result from the armed conflict of 1998-1999.
12. On 15 May 2013, the Applicant filed an appeal with the Appeals Panel, alleging "*erroneous determination of the factual situation*" and "*erroneous application of the substantive law*".
13. On 3 June 2015, the Appeals Panel (Judgment GSK-KPA-A-129/13) rejected the Applicant's appeal as ungrounded, reasoning as follows:

"KPCC has jurisdiction to resolve the property claims related to the conflict regarding the private immovable property [...] involving the circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

[...]

Therefore, the KPCC decided in a lawful manner to reject the claim".

Applicant's allegations

14. The Applicant claims that the challenged Judgment violated Article 5 [Languages] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.
15. The Applicant alleges that the Appeals Panel established the fact that "*he has testified that the claimed property is not lost due to the circumstances interrelated with the conflict which occurred in 1998/1999*". He concludes that the established fact "*is completely untrue and can only be a result of an erroneous translation, intentional or unintentional*".
16. The Applicant argues that none of the Judges and the court recorder "*have Serbian language as their native language*" and thus the established fact by the Appeals Panel is due to "*a completely erroneous translation*" of his testimony, which has "*a completely opposite meaning*". The Applicant claims that he has "*the right to use (...) Serbian language during the procedure*".
17. Finally, the Applicant also claims that his "*right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, has been violated*".
18. The Applicant concludes by requesting the Court "*to confirm the unconstitutionality of Judgment GSK-KPA-A-129/13, of 03 June 2015, and instruct the avoidance of such violations*".

Admissibility of Referral

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further provided for in the Law and foreseen by the Rules of Procedure.

20. In this respect, the Court refers to Article 113 of the Constitution, which establishes:

“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.”

21. The Court also refers to Article 47 of the Law, which provides:

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

22. In addition, the Court also takes note of the Rule 36 (1) (b) of the Rules of Procedure which foresee:

(1) “The Court may consider a referral if: (b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.

23. The Court recalls that the Applicant alleges that the challenged Judgment violated his right to use of language and to fair trial, because of an erroneous determination of facts, due to incorrect translation of his statement.

24. The Court notes that the Applicant alleges in his appeal before the Appeals Panel that *“the statement in the reasoning [of the KPCC] that I have not declared in my claim that the circumstances are directly linked to or are a consequence of the conflict in 1998-1999 is incorrect. I lost the possession over the property due to the circumstances as a result of the conflict in 1998-1999”.*

25. The Court further notes that the Applicant argued in his appeal that the *“erroneous and incomplete determination of the factual situation is reflected in what the Kosovo Property Agency failed to ascertain that I am the legal heir of the holder of property right”* and *“this resulted also with the erroneous application of substantive law, respectively the implementation of provision that defines the competence of the Kosovo Property Agency”.*

26. The Court considers that the Appeals Panel thoroughly analyzed the evidence presented and the allegations made by the Applicant, explaining and reasoning in detail why his appeal was rejected.

27. In fact, the Appeals Panel noted that KPCC explained that *“the claimed property was purchased in 1970 by the Covanay family and used it during the armed conflict”.* The Appeals Panel also mentioned that *“in reaction to the Court order, the Appellant did not substantiate that it is untrue that Covanay family in fact possessed the claimed property from before and during the*

armed conflict". In addition, the Appeals Panel noted that "since 1986 a case was pending at the Court in Prizren between the parties on the claimed property".

28. Therefore, the Appeals Panel concluded with KPCC that "the claim is not related to circumstances directly or resulting from the armed conflict and KPCC lawfully decided that KPCC does not have jurisdiction on the claim. So KPCC lawfully decided to dismiss the claim".
29. The Court notes that the Applicant's allegations before the Appeals Panel are related with ascertaining that he has the right to repossess the disputed property and as such are of a nature of legality and falls under jurisdiction of the regular courts.
30. Moreover, the Court also notes that the Applicant for the first time alleges before the Constitutional Court a constitutional violation of his rights to use of language and to fair trial, because of an incorrect translation of his statement. As a consequence of that incorrect translation, it occurred an erroneous determination of the facts and application of the law.
31. The Court further notes that the Applicant, in the regular proceedings, has neither raised concretely and substantially the alleged violation of his "right to use (...) Serbian language during the procedure"; nor has he explained why he did not invoke in the regular courts his right guaranteed by Article 5 of the Constitution in the terms he has presented before the Court.
32. In fact, the Court emphasizes that the Applicant should have presented that allegation at least in his appeal before the Appeals Panel, as he was not only entitled but also obliged to do so in accordance with the principle of subsidiarity.
33. In that respect, the Court reiterates that, in accordance with the principle of subsidiarity, the regular courts should be given the possibility of finally deciding on the matter under their consideration. This means that an alleged constitutional violation in general should not be allowed to reach the Constitutional Court, without being previously reviewed by the regular courts.
34. The principle of exhaustion of legal remedies, related with the subsidiarity principle, requires that the Applicant has exhausted all legal remedies in the regular courts proceedings before coming to the Constitutional Court.
35. Therefore, the Court considers that the Applicant has waived his right to further complain and thus has not exhausted all legal remedies afforded to him by the applicable law in Kosovo. (See, for example, Case. No. KIO7/09, *Demë and Besnik Kurbogaj*, Resolution on Inadmissibility of 19 May 2010, paragraphs 28-29).
36. That consideration is in conformity with the jurisprudence of the ECtHR, which upheld that "the applicant complained that she was not able to have the proceedings conducted in Hungarian – her mother tongue - as she was not

fluent in Serbian. The Court notes that (...) the applicant has never raised this complaint domestically. Thus this complaint needs to be rejected for non exhaustion of domestic remedies (...)". (ECtHR, Decision as to the admissibility of application 44694 by *Erzebet PAP against Serbia*, of 21 June 2011, chapter the Law, para. 3).

37. The Court observes that other decisions of the ECtHR on the same subject were delivered, among others, in the following cases: *Cardot v. France*, Application no. 11069/84, Judgment of 19 March 1991, para. 34; Decision in the Application no. 40521/06, *Aleksandr Mikhaylovich Gorbatenko against Russia*, para 43 and 44; Decision as to the admissibility of Application nos 33088/96, 52236/99, 52451/99 - 52453/99, 52455/99, 52457/99 - 52459/99 by *Anton Jazvinsky against the Slovak Republic*, of 7 September 2000, chapter the Law, para. 3, 5, 7 b), 9, 11, 14, 15, 19 and 20 a); Decision in the Application no. 36367/09, *Ziyavdi Deniyevich Kagirov against Russia*, of 27 August 2013, para. 45; decision in the Application no. 56783/11, *Miroslav Kral against Slovakia*, of 2 December 2014, para 60 to 65; Decision in the Application no. 59703/13, *Lee Anthony Roberts against the United Kingdom*, of 5 January 2016, para 42 to 45.
38. The rationale for the exhaustion principle is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the constitutional provisions. (See Case no. KI116/14, *Fadil Selmanaj*, Resolution on Inadmissibility of 26 January 2015, paragraph 48).
39. Before the foregoing, the Referral must be declared inadmissible, due to non-exhaustion of legal remedies, as established by Article 113 (7) of the Constitution and as further provided for by Article 47 of the Law and specified by Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rule 36 (1) b) and 56 b) of the Rules of Procedure, on 12 April 2016, 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. TO DECLARE this Decision effective immediately.

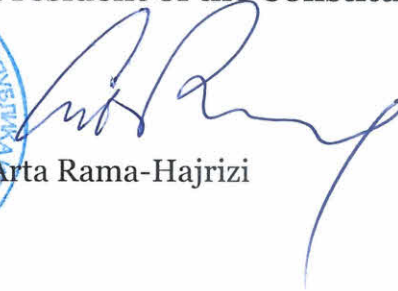
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi