



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 23 February 2016
Ref. No.:RK894/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI70/15

Applicant

Nada Zvezdić

**Constitutional review of Decision C-III-12-1681, of the Specialized Panel
of the Special Chamber of the Supreme Court of the Republic of Kosovo
on Privatization Agency of Kosovo Related Matters,
of 4 November 2013**

THE 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, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Ms. Nada Zvezdić, residing in Kragujevac, Republic of Serbia (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Decision (C-III-12-1681, of 4 November 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters (hereinafter, the Specialized Panel).
3. The Applicant has not mentioned the date of service of that challenged decision.

Subject Matter

4. The subject matter of this Referral is the constitutional review of the challenged decision, which allegedly violated the rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), and Article 6.1, in conjunction with Article 13, of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, in conjunction with Article 22 and 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 3 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 August 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the members of the Review Panel, composed of Judges Altay Suroy (Presiding), Bekim Sejdiu (member) and Arta Rama-Hajrizi (member).
8. On 13 September 2015, the Court informed the Applicant about the registration of the Referral. A copy was sent to the Specialized Panel.
9. On 7 October 2015, the Court requested from the Applicant to submit additional information and clarification within a deadline of seven (7) days.
10. The Applicant has not submitted the required information and clarification.
11. On 25 January 2016, 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

12. On 8 January 1998, the Applicant, together with 10 (ten) other individuals, filed lawsuits with the Municipal Court in Gjakova (P. no. 1402/92, P. no. 60/97, P. no. 2/98, and P. no. 5/98) against the respondents JSC "Ereniku", SOE "Prodhimtaria Primare" Gjakova and the Municipality of Gjakova. They requested the annulment of the contract on gift of immovable properties and confirmation of their ownership, which is now registered in the name of the first respondent JSC "Ereniku".
13. On 23 August 2012, the Municipal Court in Gjakova (Decision C. no. 85/2007), declared itself incompetent to resolve the claim and decided to refer the case to the Specialized Panel. The case was in fact referred to the Specialized Panel on 22 October 2012.
14. On 4 November 2013, the Specialized Panel (Decision C-III-12-1681) decided that *"the proceedings in the claim of the claimant, Aleksander Zvezdic and others, against the respondent 'Ereniku' is suspended until the Special Chamber determines the status of the respondent 'Ereniku', by final and enforceable decision in case no. SCC-08-0124"*.
15. Moreover, the Specialized Panel explained that *"The Special Chamber has a pending case which concerns the legal status of the respondent SOE 'Ereniku'. The claim is registered under number SCC-08-0124. [...] ...Therefore, firstly should be determined the legal status of the respondent 'Ereniku' in order to know definitively if 'Ereniku' is a SOE; therefore, if it is under the administration authority of the Privatization Agency of Kosovo, so that the Special Chamber may decide whether the respondent may have legal status of respondent in a claim with the Special Chamber, which is one of the most important elements of the claim eligibility criteria"*.
16. In addition, the Specialized Panel stated that, *"In accordance with Article 10.6 of the Law 04/L-033 on the Special Chamber, a party shall have the right to appeal any Judgment or decision (...) to the appellate panel (...) within twenty-one (21) days"*.

Applicant's allegations

17. The Applicant mainly complains about the delays of resolution of the property claims which are pending for 12 (twelve) years.
18. Moreover, the Applicant, *inter alia*, alleges that *"if the immovable properties that are subject of the disputes are sold in the privatization tendering procedures through the Privatization Agency of Kosovo in Prishtina, the claims shall lose their subject matter and we shall be deprived of our immovable property as a consequence of the lack of action by the courts that review our cases"*.
19. The Applicant concludes that the submission of the Referral is *"due to violation of rights to a fair trial [Article 6.1 of the European Convention on Human*

Rights (hereinafter: ECHR), rights to an effective legal remedy (Article 6.1 and 13 of the ECHR) and the right to a court decision within a reasonable time limit (Article 6.1 of the ECHR)”.

20. In addition, the Applicant mentions that *“We have not exhausted all legal remedies as required”*, because *“It is clear that in the given case the exhaustion of available legal remedies would be ineffective”*.

Admissibility of the Referral

21. The Court first examines whether the Referral fulfils procedural admissibility requirements laid down in the Constitution and as further specified in the Law and Rule of Procedure.
22. The Court preliminarily notes that no date of service of the challenged decision was mentioned. However, due to the nature of the complaint (non exhaustion), the Court considers that the omission is irrelevant for the decision to be taken.
23. The Court further notes that the Applicant complains on the delays of the proceedings, namely the delay of property claim decision by the courts, referring to various constitutional provisions related to fundamental human rights guaranteed by Chapter II of the Constitution.
24. In this context, the Court considers that certain requirements must be met in relation to the allegation on a violation of the right to a court decision within a reasonable time, such as: the complexity of the case, the conduct of the Applicant, the conduct of the court or administrative authorities in relation to the requests of the Applicant, as well as the existence of connection between various procedures.
25. The Court considers that it is up to the Applicant to substantiate the allegation, and to present relevant and pertinent evidence, in order for the complaint to be grounded.
26. However, the Applicant failed to substantiate and prove her allegations. In fact, the Applicant does not show that she complained before the regular court for the length of proceedings. Moreover, the Applicant has not filed an appeal with the Appellate Panel against the decision on suspending the case and consequently delaying a solution in her case.
27. Therefore, the Court cannot assess whether the Applicant’s allegations are grounded and constitute the constitutional basis for violation of her right to an effective legal remedy and the right to a judicial decision within a reasonable time.
28. The Court refers to Article 113.7 of the Constitution, which establishes:

“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”.

29. The Court also refers to Article 47.2 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”.

30. In addition, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which foresees:

“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”.

31. In this regard, the Court notes that the Specialized Panel (Decision C-III-12-1681, of 4 November 2013) suspended the adjudication of the case until deciding on the status of the respondent JSC “Ereniku” (pending case SCC-08-0124) by final and executable judgment.

32. The Court notes that the Applicant is aware of the criteria of exhaustion of legal remedies required by Article 113.7 of the Constitution and 47.2 of the Law. However, the Applicant immediately filed the Referral with the Court alleging that the *“available legal remedies would be ineffective”*.

33. Regarding this allegation, the Court notes that the Specialized Panel explained that the case *“is suspended until the Special Chamber determines the status of the respondent ‘Ereniku’”*. Thus the Specialized Panel considered that a decision cannot be made in the Applicant’s case without having previously determined the status of the respondent ‘Ereniku’. Therefore, the reference made by the Applicant to the cases of the ECtHR cannot be applicable to the circumstances of her case.

34. The Court considers that the Applicant’s case has not yet been finally decided by the Specialized Panel, due to reasons related with the complexity of the case.

35. 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 violation of human rights in general should not be allowed to reach the Constitutional Court, without being previously reviewed by the regular courts.

36. 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 Court. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for an eventual violation of constitutional rights. This is an important aspect of the subsidiary character of the constitutional referral. (See Resolution on Inadmissibility in Case K107/09, *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional review of Judgment Pkl. no. 61/07, of the Supreme Court, of 24 November 2008, paragraph 18. Resolution on Inadmissibility in case KI-41/09, *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, of 21 January 2010, and, *mutatis mutandis*, ECtHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

37. Therefore, the Court finds that, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, the Referral is premature and thus is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law, Rule 36 (1) (b) of the Rules of Procedure, on 25 January 2016, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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