



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

Pristine, 04.april 2012
Ref. No.:RK 216/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 98/10

Applicant

Ombudsperson of the Republic of Kosovo

Constitutional Review of Decisions 01 no. 06/837, dated 16 April 2009, and Npi-01/132, dated 30 April 2009, of the Municipal Assembly of the Municipality of Shtime

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
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is the Ombudsperson of the Republic of Kosovo (hereinafter: the "Ombudsperson"), submitting the Referral, pursuant to Article 113.2.2 of the Constitution in the case of Ms. Lelica Ristić, residing in Jagodina, Republic of Serbia.

Challenged decision

2. The Applicant challenges the decisions of the Municipal Assembly of the Municipality of Shtime, 01 no.06/837 of 16 April 2009 and Npi-01/132 of 30 April 2009.

Subject matter

3. The Applicant claims that Article 36 [Right to Privacy] guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), as well as Article 8.1 [Right to respect for private and family life] and Article 14 [Prohibition of discrimination] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) have been violated.

Legal basis

4. Article 113.2 (2) of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 7 October 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 16 December 2010, the President, by Order No.GJR. 98/10, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No.KSH. 98/10, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
7. On 17 January 2011, the Referral was communicated to the Municipal Assembly of the Municipality of Shtime (hereinafter: the "Municipal Assembly").
8. On 13 May 2011, the Review Panel considered the Report of the Judge Rapporteur and the majority made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 30 December 1996, the Municipal Assembly took Decision No. 01 no.360/659 allocating, for an indefinite period of time, the use of a flat to Ms. Ristić, as employee of the Municipal Administration. The allocation of the flat was done by the Board for the housing of employees in need of the Municipal Administration of Shtime, and confirmed by Decisions, No. 01, 06-605/1, dated 7 October 1996, and No. 360/620, dated 11 October 1996.
10. In June 1999, Ms. Ristić left Kosovo, due to the security and political situation, and moved to Jagodina, Serbia.
11. On 7 July 2008, Ms. Ristić, escorted by members of the Kosovo Police (hereinafter: the "KP") and officials of the Liaison Office for the Ferizaj courts, visited the flat concerned and confirmed that a few persons had illegally occupied it.
12. On 27 July 2008, Ms. Ristić, again escorted by the officials of the Liaison Office, reported to the KP station in Shtime and filed a complaint together with a copy of Decision 01, no.360/659, dated 30 December 1996, as evidence of her right to use the flat.

13. On 10 June 2009, Ms. Ristić filed a complaint with the Ombudperson against the Municipal Assembly and the Kosovo Police, since they had not enabled her to move to the contested flat, which was being illegally occupied by a third party.
14. On 18 September 2009, the Applicant acted on the complaint of Ms. Ristić and addressed a communication to the Chief of the Police Station in Shtime, asking for information regarding the flat.
15. On 22 October 2009, the Applicant got a reply from the Chief of the Police Station, who informed that the Municipal Assembly, by Decision 01-No.06/837 of 16 April 2009, had unanimously decided to annul Decision No.01.no.06/605/1 of the Municipal Assembly, dated 7 October 1996 concerning the allocation of "commercial-residential" flats in Shtime to former employees of Municipal Administration for an indefinite period of time.
16. According to the Chief of Police, since the Municipal Assembly had annulled the right of use of the contested flat, the flat had been allocated to the illegal holder. Ms. Ristić as well as other holders of the right of use of such flats, were not informed of the decision issued by the Municipal Assembly to annul that right.
17. Furthermore, the legal consequences of Decision 01 No. 06/837 of 16 April 2009 were only applied to Ms. Ristić, since other occupants in the building concerned kept their right of residence.
18. After the reply of the Chief of Police, Ms Ristić submitted all the necessary documentation to the Applicant, confirming that she is the holder of the right of occupancy of the contested flat. She also filed a complaint with the Liaison Office for the Ferizaj courts, which, together with officers of the Police station in Shtime, had evicted the person who was illegally staying in the flat.
19. On 26 February 2010, Ms. Ristić submitted a request to the Prime Minister's Office, respectively, to the Office for Community Matters, asking for *restitutio in integrum* (return to the previous state), attaching a copy of Decision no.360/659, dated 30 December 1996 on the right of using the above-mentioned flat. She, however, never received any reply.
20. On the same day, the Applicant wrote to the Mayor of Shtime Municipality, requesting him to present an explanation regarding the legal basis of Decision Npi. 01/132, issued by the Municipal Assembly on 30 April 2009 and by which Ms Ristić's and other tenants' right to occupy the relevant flats in Shtime Municipality had been annulled.
21. On 16 March 2010, the Applicant received an official response from the Mayor, stating that the legal basis for the decision issued by the Municipal Assembly, annulling the occupancy right of Ms. Ristic, was the concession contract, concluded between the Municipal Assembly and the construction company GP-"Gradevinar" from Kraljevo, Republic of Serbia. According to the Mayor, the Municipal Assembly had acted in compliance with Article 5 (b) and Article 12(2)(d) of Law nr.30/L-040 on Local Governance.

Applicant's allegations concerning Ms. Ristić's case

22. The Applicant claims that Decision nr.01/132 of the Municipal Assembly of Shtime denied to Ms. Ristić the right to use the flat concerned, constituting a violation of Article 36 of the Constitution.

23. Furthermore, the Applicant alleges that Article 36 of the Constitution, in conjunction with Articles 8 [Right to family life] and 14 [Prohibition of Discrimination] ECHR have been violated.
24. In addition, the Applicant claims that, according to the case-law of the European Court on Human Rights (hereinafter: the "ECtHR"), the contested flat in this case could be considered as "home", in the sense of Article 8 ECHR (*see: Gilloë vs United Kingdom, Judgment of 24 November 1986*). Also in the case of *Larkos vs Cyprus*, Judgment no.2951/95, ECHR 1999-I, the European Court on Human Rights (hereinafter; "ECtHR") has made reference to Article 14 ECHR in conjunction with Article 8 ECHR, providing that the tenant's right to reside in a specific place includes the right to a home and not the right to property.
26. In this case, the Applicant claims that there was a violation of Article 14, in conjunction with Article 8 ECHR, since the Municipal Assembly did not act rightly, since it issued the decisions on annulling the occupancy right of Ms. Ristić, while other tenants retained the right to use their flats. The flat that has been used by Ms. Ristić, was given to an illegal occupant. Due to this fact, the Applicant refers to the decision of the ECtHR, the case of *Larkos vs Cyprus*, Judgment no. 2951/95, ECHR 1999-I, where the ECommissionHR and the ECtHR shared the opinion that there was a violation of Article 14 ECHR, in connection with Article 8 ECHR. Therefore, the Applicant considers that there was no reasonable and objective justification that Ms. Ristić was denied the right retained by the other tenants.
27. Furthermore, the Applicant refers to Article 2.1 of UNMIK Regulation 2000/60 on Residential Property Claims of 31 October 2000, this Regulation, stating that: "*Any property right which was validly acquired according to the law applicable at the time of its acquisition remains valid notwithstanding the change in the applicable law in Kosovo, except where the present regulation provides otherwise*". The Applicant also refers to Article 6 scope (b) of the Regulation, reading as follows:
- ".....
b) *Notwithstanding the provisions of any other law, no occupancy right to a socially owned apartment may be terminated without:*
- (i) *The consent of the occupancy right holder or the Housing and Property Directorate; or*
(ii) *An order of the Commission, as provided for in the present regulation.*
..."
28. Moreover, the Applicant refers to the applicable Law on Housing Relations read in conjunction with UNMIK Regulation 2000/60 on Residential Property Claims, Rules of Procedure, evidences of the Housing and Property Directorate as well as the Commission on Housing Relations, stating that, in this particular case, the Municipal Assembly's decisions were not based on applicable law, under which every legal and political entity would be under the obligation to apply the rule of law and good governance in Kosovo.
29. The Applicant concludes that the Municipal Assembly in Shtime, after the issuance of Decision 01 no. 06/837, dated 16 April 2009, and Decision Npi-01/132, dated 30 April 2009, did not respect the Constitution and applicable laws as well as the ECHR. Additionally, the Applicant considers the action of the Municipality of Shtime annulling the right of Ms. Ristić to use the flat and giving it to an illegal holder, a violation of the principles of good governance.

Assessment of the admissibility of the Referral

30. Regarding the Applicant's claims that the rights provided by Article 36 [Right to Privacy] of the Constitution and 8.1 [Right to respect for private and family life] and Article 14 [Prohibition of discrimination] ECHR are violated in the present case, the Court first must review whether the Applicant of the Referral has met all requirements of admissibility stipulated by the Constitution, the Law and the Rules.
31. The Court notes that pursuant to Article 135.4 of the Constitution, "The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution." Article 113.2 further specifies when the Ombudsperson is authorized to make a referral to the Court.
32. In this connection, the Constitutional Court notes that the Applicant has submitted the Referral in relation to the case of Ms. Ristić, against Decisions 01 nr.06/837 of 16 April 2009 and Npi-01/132 of 30 April 2009 taken by the Municipal Assembly of Shtime, based on Article 113.2.2 of the Constitution, providing:
- "The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court: the compatibility with the Constitution of municipal statutes."*
33. In this respect, the Court concludes that the above mentioned Decisions of the Municipal Assembly do not constitute "municipal statutes" in the sense of Article 113.2.2 of the Constitution, which are normative acts, regulating the competences and organization of the municipality as well as the interaction between the municipality and the citizens in accordance with the Constitution and the Law, while the Decisions taken by the Municipal Assembly in the Applicant's case are, unlike statutes, decisions taken in the particular case of an individual or a legal person.
34. Furthermore, the Court considers that the Applicant, for the purpose of bringing a constitutional complaint in order to pursue/represent individual interests before this Court, is not an authorized party under the Constitution. The Applicant, as an independent institution (Ombudsperson), pursuant to Article 133 [Office of Ombudsperson] of the Constitution, is only a party, authorized to submit a request for abstract control to this Court, pursuant to Article 113.2.2 of the Constitution.
35. In these circumstances, the Court concludes that the Referral by the Applicant challenging the contested Decisions of the Municipal Assembly of Shtime cannot be adjudicated, since the matter was not referred to the Court in a legal manner by an authorized party pursuant to Article 113.1 of the Constitution.
36. However, since an individual can bring a Referral before the Court, pursuant to Article 113.7, providing:
- "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",*
- there does not seem to be any reason, why Ms Ristić could not have submitted a Referral to this Court in her own name.
37. Consequently, the Applicant's Referral is inadmissible, pursuant to Article 113.1 of the Constitution and Rule 36.3.c of the Rules of Procedure.

FOR THESE REASONS


The Constitutional Court, pursuant to Article 20 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 13 May 2011, by majority vote


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 on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Kadri Kryeziu


Prof. Dr. Enver Hasani

