



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

Prishtina, 31 August 2015
Ref. No.: RK 833/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI05/15

Applicant

Reshat Osmani

**Constitutional review of the Judgment of the Appellate Panel of the
Special Chamber of the Supreme Court of Kosovo on Privatization
Agency Related Matters, AC-I-14-0061, of 5 September 2014**

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 and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Reshat Osmani with residence in Hani i Elezit, who is represented by Mr. Miftar Islami, practicing lawyer in Ferizaj.

Challenged decision

2. The challenged decision is the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), AC-I-14-0061, of 5 September 2014, which rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Specialized Panel of the SCSC (hereinafter: the Specialized Panel of the SCSC), of 12 February 2014.
3. The challenged decision was served on the Applicant on 23 September 2014.

Subject matter

4. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel of the SCSC which, according to the Applicant's allegations violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as 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 the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 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 14 January 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 9 February 2015, the President of the Court, by Decision GJR. KI05/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President by Decision, KSH. KI05/15, appointed the Review Panel, composed of Judges, Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 20 February 2015, the Court notified the Applicant of the registration and requested him to submit the authorization for representation before the Court. On the same date, the Court submitted a copy of the Referral to the SCSC.
9. On 9 March 2015, the Applicant submitted the authorization for representation before the Court.
10. On 23 March 2015, the Court sent a copy of the Referral to the Privatization Agency of Kosovo (hereinafter: PAK).

11. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

12. In 1963, the Applicant's father sold two (2) parcels of land located in the municipality of Ferizaj to an Agricultural Cooperative.
13. Based on the case files, following a change in the law, in 1996, the Applicant's father filed a claim with the Municipal Court in Ferizaj to annul the sale of those two (2) plots of land.
14. On 23 March 1998, the Municipal Court in Ferizaj (Judgment, P. No. 287/96) apparently approved the claim of the Applicant's father and annulled the purchase contract of 1963 as unlawful. In addition, the Municipal Court ordered the agricultural cooperative, the Socially-Owned Enterprise "Pasuria Bujqësore" to hand over the plots to the the Applicant's father, and obliging him to pay a certain amount of money to the agricultural cooperative in compensation. It appears that these two plots of land were never transferred to the Applicant's father.
15. At some point in time the Applicant's father died. As the legitimate heir, the Applicant continued to pursue the claim for the return of the plots of land.
16. From the case files it appears that the aforementioned plots became subject of a privatization process by PAK.
17. On 4 August 2011, the Applicant submitted a request to PAK to remove the plots from the privatization process.
18. On 17 October 2011, the Applicant filed a claim with the SCSC, initially seeking verification of ownership over two (2) cadastral parcels, based on adverse possession.
19. On 5 December 2011, the Applicant filed another request with the Specialized Panel of the SCSC for a preliminary injunction to remove the plots of land from the privatization process.
20. On 19 March 2012, the Specialized Panel of the SCSC rejected the Applicant's request for preliminary injunction as ungrounded.
21. On an unspecified date, as a result of the privatization process, PAK sold the aforementioned plots to a third party.
22. On 10 December 2013, the Specialized Panel of the SCSC held a public hearing, whereby it provided the Applicant with the possibility to amend or specify his claim. During the public hearing, the Applicant through his representative had requested either the return of the cadastral parcels, for which he was claiming the ownership or compensation with another plot of land for the parcels, which in the meantime were sold to a third party. As to the Applicant's second request,

the Specialized Panel of the SCSC during the public hearing has requested the Applicant to specify the plot of land he was requesting as compensation for the sold parcels.

23. On 12 February 2014, the Specialized Panel of the SCSC (Judgment, SCC-11-0240) rejected the Applicant's claim as ungrounded.
24. As to the Applicant's claim on the confirmation of his ownership over the two (2) aforementioned cadastral parcels based on the adverse possession, the Specialized Panel of the SCSC held that prohibition of the adverse possession against Socially Owned Enterprises was abolished in 1996 and only as of that time it was possible to restart counting it. Hence, the Specialized Panel of the SCSC referring to the provisions of the Law on Basic Property Relations held that the period for the adverse possession of the land property is twenty (20) years. Therefore, according to the Specialized Panel of the SCSC, even if the land had not been sold to the third party, the Applicant would not acquire the ownership rights based on the aforementioned legal basis.
25. As to the Applicant's claim for compensation of another plot of land, the Specialized Panel of the SCSC held that, despite the fact the Applicant was given the possibility to specify his claim, he failed to identify the land he was requesting as compensation for the parcels that were sold to a third party.
26. Hence, the Specialized Panel of the SCSC concluded that the Applicant's claim has to be rejected because it is ungrounded from the factual point of view and further held that even if the claim had been amended and specified as requested by the Specialized Panel of the SCSC, it would consider it is as ungrounded because the requirements of the adverse possession were not met in his case.
27. On 16 February 2014, the Applicant filed an appeal against the Judgment of the Specialized Panel of the SCSC, requesting the latter to approve his request for compensation with another plot of land or quash the Judgment of the Specialized Panel of the SCSC and remand the case for review and retrial. As to the conclusion of the Specialized Panel of the SCSC, that the Applicant had failed to specify his claim, he argued that it was impossible to identify the plot of land he was requesting as compensation, since he did not have access to the Cadastral Service.
28. On 5 September 2014, the Appellate Panel of the SCSC (Judgment, AC-I-14-0061) rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Specialized Panel of the SCSC.
29. In its Judgment, the Appellate Panel of the SCSC, referring to the provisions of the Law on Contracts and Torts (Official Gazette of SFRY 29/78) held that even in case the Specialized Panel of the SCSC had confirmed the ownership of the claimed parcels to the Applicant and PAK had alienated that parcel to his detriment, the latter would only be entitled to a monetary compensation. According to the Appellate Panel of the SCSC, the Applicant did not request for such compensation.

30. Thus, the Appellate Panel of the SCSC concluded that the Applicant's appeal is to be rejected as ungrounded because *"the lack of a sufficient clarified request hinders the court to grant any legal remedy."*

Applicant's allegations

31. As mentioned above, in his Referral, the Applicant alleges that the Judgment of the Appellate Panel of the SCSC violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, as well as Article 6 [Right to a fair trial] of the ECHR.
32. The Applicant addresses the Court with the following request for compensation with *"another plot of land or monetary compensation in accordance with the value determined by the experts."*

Admissibility of the Referral

33. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

34. The Court takes into account Article 48 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".

35. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...], or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim".

36. As mentioned above, the Applicant alleges violation of his right to fair trial and impartial trial and protection of property, guaranteed by the Constitution and the ECHR.
37. However, the Court notes that the Applicant only listed the aforementioned provisions, but did not present any arguments or evidence in support of his allegations.
38. In this regard, the Court reiterates that dissatisfaction with the decision does not suffice for the Applicant to raise a credible allegation of a constitutional

violation of the right to a fair trial. When alleging constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded. (See Case No. KI198/13, Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

39. Furthermore, the Court reiterates that it is not its task under the Constitution to substitute the role of the regular courts in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also Case KI70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
40. The Court considers that both the Specialized Panel and the Appellate Panel of the SCSC conducted the proceedings in a fair way and justified their decisions on the grounds of the Applicant's claim and the appeal. In this relation, the Appellate Panel of the SCSC confirmed that the Applicant was given several possibilities to specify or identify the plot of land he was requesting as compensation for the sold parcels by PAK and therefore the Appellate Panel concluded that the Applicant had failed to provide a sufficiently specified request for the court to decide on any legal remedy.
41. Finally, the Applicant has not presented any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (See case *Vanek vs. Republic of Slovakia*, No. 53363/99, ECtHR Decision of 31 May 2005) and did not specify how the referred articles of the Constitution and the ECHR were violated.
42. Based on the foregoing, the Court concludes that the Applicant has not substantiated his allegations of violations of his right to a fair and impartial trial and protection of property. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2), b) and d) of the Rules of Procedure on 31 August 2015, 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Ivan Čukalović



President of the Constitutional Court


Arta Rama-Hajrizi