



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

Prishtina, on 2 February 2016  
Ref. No.:RK885/16

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI101/15**

Applicant

**Rujdi Kasemlari**

**Request for Constitutional Review of Decision AC-I-14-0211-A0001, of  
the Appellate Panel of the Special Chamber of the Supreme Court of  
Kosovo on Privatization Agency of Kosovo Related Matters,  
of 19 March 2015**

### 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 Referral was submitted by Mr. Rujdi Kasemlari from Prizren (hereinafter: the Applicant), who is represented by a lawyer, Mr. Refki Taç.

## **Challenged Decision**

2. The Applicant requests the constitutional review of Decision AC-I-14-0211-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 19 March 2015, which was served on the Applicant on 31 March 2015.

## **Subject Matter**

3. Subject matter of Referral KI101/15 is the constitutional review of the Decision which, allegedly, violated the Applicant's constitutional rights and freedoms as 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).

## **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 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**

5. On 21 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 9 August 2015, the President of the Court, by Decision no. GJR. KI101/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI101/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 4 September 2015, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.
8. On 22 December 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

## **Summary of Facts**

9. On 18 October 2012, the Applicant filed a claim with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against persons J. N., B. N., as well as the socially-owned enterprise "PIK Progres-Export" (hereinafter: PIK), by which he requested the confirmation of his ownership rights over two parcels of land.
10. On 25 October 2013, the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter:

the Specialized Panel) requested the Applicant to submit within 15 days the specified claim in which he should state the accurate addresses of the respondents J.N. and B.N.

11. On 15 November 2013, the Applicant responded to the request of the Specialized Panel stating that, *"the respondents moved to Turkey 60 years ago, and in the meantime, they have perhaps changed their surnames, which means that their addresses were unknown to him."*
12. On 23 May 2014, the Specialized Panel rendered partial Decision [C-III-12-1711] by which it rejected the Applicant's claim against the respondents J.N. and B.N. as inadmissible, with the reasoning that, *"the claimants did not provide any address (even the old address which they could have known) for the first and second respondent, or any other evidence if the above-mentioned address is unknown to the authorities, which is the obligation of the claimant pursuant to Article 17.2 of the Annex of the Law on Special Chamber."*
13. As regards the Applicant's claim against PIK, the Specialized Panel on the same date (23 May 2014) rendered Judgment [C-III-12-1711] by which it rejected the Applicant's claim as ungrounded due to absence of the Applicant, in accordance with Article 52.2 of the Annex of the Law on the Special Chamber. In the reasoning of the Judgment the Specialized Panel stated: *"The claimant did not appear on 28 January 2014, at the hearing session. The claimant also did not appoint the representative to represent him because of his absence. Mr. R.T. appeared at the court in the hearing session by stating that he was the representative of the claimant, but did not submit a valid power of attorney, and as such cannot be considered a legitimate representative of the claimant."*
14. On 7 July 2014, the Applicant filed an appeal against the partial decision on the inadmissibility of the claim, as well as against the Judgment of the Specialized Panel, of 23 May 2014.
15. On 19 March 2015, the Appellate Panel rendered Decision [AC-I-14-0211-A0001] by which it rejected the Applicant's appeal as ungrounded with the reasoning that, *"After having considered the appealed allegations of the claimant and the case file documents, the Appellate Panel found that the appeal is ungrounded, and therefore, it upheld Decision [C-III-12-1711] of the Specialized Panel. The Specialized Panel has correctly based its decision on Article 17.2 and Article 52.2 of Annex of the Law on the Special Chamber."*

### **Applicant's Allegations**

16. The Applicant alleges that: *"the Special Chamber of the Supreme Court, by avoiding the obligations under Article 19.2 of Annex of the Law on the Special Chamber to order the claimant that within 15 days submits the addresses of the respondents, who moved to Turkey 60 years ago, violated the right to a trial, which is related to the right to property, the rights guaranteed by the Constitution of Kosovo and international documents applicable in Kosovo."*
17. The Applicant addresses the Court *"with a request that the Constitutional Court renders DECISION and declares the Decision AC-I-14-0211-A0001, of*

*the Special Chamber of the Supreme Court of Kosovo of 19 March 2015, unconstitutional, assuming that in the procedure of retrial will be eliminated the violations of rights ...”*

### **Admissibility of the Referral**

18. In order to be able to adjudicate the Applicant's complaint, the Court should first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

19. In this respect, Article 113 paragraph 7 of the Constitution provides:

*“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.”*

20. Article 48 of the Law also 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”.*

21. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which states:

*“(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:*

*[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights”.*

22. The Court notes that the Applicant built his constitutional complaint on the allegation of violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.
23. With respect to the complaint that the Applicant has not benefitted from a fair trial under Article 31 of the Constitution and Article 6 of the ECHR, the Court notes that the right to a fair trial is a complex right encompassing a series of rights that should be provided, equally, by all competent authorities and all parties to the proceedings.
24. The Court also recalls that the principle of a fair and impartial trial requires that courts refer to a specific legal norm, whereas the legal basis of the judgment should not be arbitrary, i.e. out of the present case.

25. In the present case, the Court notes that the Specialized Panel based its Decision and Judgment [C-III-12-1711] on the legal provisions of Article 17.2 and Article 52.2 of the Annex of the Law on Special Chamber which states:

*17.2 “A Claimant shall also provide in its claim or complaint the name of each person specifically identified as a Respondent. The Claimant shall also undertake reasonably diligent efforts to ascertain and provide the last known address of each such person and include such information in its claim or complaint”.*

*52.2 „If a duly summoned Claimant fails to appear at a hearing or otherwise abandons the proceedings, the concerned judge(s) may, upon application of the Respondent, render a default Judgment against the Claimant dismissing the claim and ordering the Claimant to pay all costs of the proceedings.”*

26. As such, the Court notes that the regular courts found that the Applicant had failed to comply with procedural requirements laid down in legislation. The Court further notes that the Appellate Panel in Decision [AC-I-14-0211-A0001] also confirmed the accuracy of the legal provisions on which the Specialized Panel based its decision.
27. Based on the above, the Court notes that the Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR are ungrounded.
28. Assessing the reasons of the constitutional complaint from the aspect of the provisions of Article 46 of the Constitution and the right to property under Article 1 of Protocol no. 1 of the ECHR, the Court is of the opinion that the mere fact that the Applicant in the legal matter of confirmation of his property rights did not succeed to convince the regular courts, does not by itself represent a valid ground to establish a violation of his rights guaranteed by Article 46 of the Constitution, unless he substantiates that the court has arbitrarily and unjustly deprived him of the property (see Case: *mutatis mutandis Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, the ECHR judgment of 26 July 2005).
29. Therefore, the Court considers that the Applicant has not substantiated his claims, nor he has submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see case no. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision of the Court of Appeal of Kosovo, CA. no. 2129/2013, of 5 December 2013 and Decision of the Court of Appeal of Kosovo, CA. no. 1947/2013, of 5 December 2013).
30. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant in the Referral has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.
31. Accordingly, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) d) and (2) (b) of the Rules of Procedure.



## FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 22 December 2015, with majority of votes

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and
- IV. This Decision effective immediately.

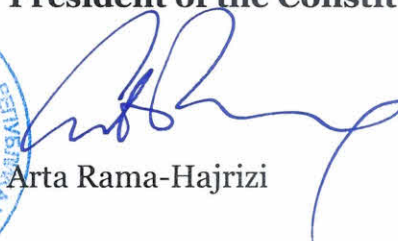
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi