



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

Prishtina, 12 January 2015
Ref. No.: RK748/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI111/14

Applicants

Mladen Denić and Milorad Vitković-Denić

**Constitutional Review
of the Decision, AC-I.-13-0041, of the Appellate Panel of the Special
Chamber of the Supreme Court of Kosovo on Privatization Agency of
Kosovo Related Matters, of 5 June 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicants

1. The Referral was submitted by Mr. Mladen Denić and Mr. Milorad Vitković-Denić, residing in Kraljevo, Republic of Serbia (hereinafter, the Applicants). They are represented by Mr. Branislav M. Vitković residing in Kraljevo, Republic of Serbia.

Challenged Decision

2. The challenged decision is the Decision, AC-I.-13-0041, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, Appellate Panel of the SCSC) dated 5 June 2014, which the Applicants declare to have received on 16 June 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision which rejected the Applicants' appeal filed against the Decision (SCC-11-0026, of 20 March 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel of the SCSC) concerning restitution of an immovable property.
4. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [Justice System] and Article 103 [Organization and Jurisdiction of the Court] paragraph 7.
5. The Applicants also request from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to prohibit any sale, resale, lease and sublease, construction or placing of any burden on the immovable property which is the subject of the dispute.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 1 July 2014 the Applicants submitted the Referral to the Court.
8. On 5 August 2014 the Applicants submitted an additional letter where they requested from the Court to impose an interim measure.
9. On 6 August 2014 the President by Decision, GJR. KI111/14 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date the President by Decision, KSH. KI111/14, appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.
10. On 8 August 2014 the Court informed the Applicants of the registration of the Referral and requested that Mladen Denić files a power of attorney for Branislav M. Vitković in case he chooses to be represented by him, as

announced in the Referral. On the same date the Court sent a copy of the Referral to the Appellate Panel of the SCSC.

11. On 20 August 2014 Mladen Denić submitted the requested document to the Court.
12. On 12 September 2014, the Court informed the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (hereinafter, the SCSC) of the registration of the Referral and requested that they comment on the allegations raised by the Applicants in regards to excessive length of proceedings.
13. On 23 September 2014 the SCSC submitted their comments.
14. On 8 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible and to reject the request for interim measures.

Summary of facts

I. Proceedings before the Constitutional Court

15. In addition to the present Referral, the Applicants had submitted two other Referrals to the Court. The first Referral (KI 18/10) was filed on 24 February 2010 and the second Referral (KI 130/11) was filed on 3 October 2011.
16. On 12 April 2011, the Court decided on case no. KI 18/10 where it rejected the Applicants' request for constitutional review of the Decision (Gzz. No. 36/2007, dated 13 December 2007) of the Supreme Court of Kosovo as inadmissible due to non exhaustion of all available legal remedies.
17. After receiving the aforementioned Resolution on Inadmissibility, the Applicants filed their second Referral to the Court where they requested a reexamination of that Court's decision.
18. On 4 May 2012, the Court rendered its decision on case no. KI 130/11 and rejected the Applicants' request for reexamination of its Resolution on Inadmissibility pursuant to Rule 36 (3) e) of the Rules of Procedure because it considered that there are no sufficient grounds for a new decision. However, in respect to Applicants' complaint regarding the excessive length of proceedings the Court stated that this Resolution "*does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings*" once they have raised these allegations "*before the higher instance Courts, including the Supreme Court*".
19. On 1 July 2014, the Applicants filed their third Referral with the Court where they challenge the constitutionality of the Decision (AC-I.-13-0041, of 5 June 2014) of the Appellate Panel of the SCSC.

II. Procedure before the regular courts

20. On 4 December 2006, the Applicants filed a claim with the SCSC requesting restitution of an immovable property which was nationalized for the establishment of the Agricultural Cooperative Kosova [latter known as the “Socially Owned Enterprise Kosova Export”].
21. On 31 January 2007 the Specialized Panel of the SCSC (Decision, SCC-06-0498) referred the case for adjudication to the Municipal Court in Prishtina.
22. On 16 April 2007 the Municipal Court in Prishtina (Judgment, P. No. 236/97) adjudicated the referred matter and it verified the Applicants’ ownership over that immovable property and ordered the transfer of the property in the possession of the Applicants.
23. On 13 December 2007, acting upon the request for protection of legality filed by the State Prosecutor, the Supreme Court (Decision Gzz. No. 36/2007) annulled the aforementioned Judgment of the Municipal Court and remanded the case for retrial to the Municipal Court.
24. On 3 October 2011, after the case had been remanded to the Municipal Court in Prishtina and whilst it was still pending before it, the Applicants filed a parallel claim with the SCSC and requested that:
 - a) the Judgment (P. No. 236/97, dated 16 April 2007) of the Municipal Court in Prishtina is confirmed by the SCSC since, according to the Applicants: *“this Judgment has not been appealed and therefore became final on 5 May 2007”*; and
 - b) the Decision (Gzz. No. 36/2007, dated 13 December 2007) of the Supreme Court of Kosovo is declared null and void since: *“the Supreme Court did not have jurisdiction to review the Municipal Court Judgment P. No. 236/97 because pursuant to the Referral Decision SCC-06-0498 the Special Chamber retained exclusive jurisdiction over any appeal against the decision or judgment of the first instance court.”*
25. On 22 June 2012 the Municipal Court in Prishtina sent the case file [repeated proceedings for the case P. No. 236/97] to the SCSC for adjudication. The case was registered with the SCSC under the number C-III-12-1095 and is still pending before the SCSC.
26. On 4 March 2013 the Applicants filed a request for Preliminary Injunction with the SCSC against three respondents, namely the Supreme Court of Kosovo [Respondent 1], M. M. [Respondent 2] and the Socially Owned Enterprise Kosova Export [Respondent 3].
27. On 20 March 2013 the Specialized Panel of the SCSC by Decision SCC-11-0026 dismissed the Applicants’ claim and request for Preliminary Injunction as inadmissible. In reasoning its decision the Specialized Panel of the SCSC held that:

“[...] The court finds that the claim initially filed on 4 December 2006, SCC-06-0498, with the Special Chamber, as referred to the Prishtinë/Priština

Municipal Court, is still pending, because it has not been decided with a final court judgment. Pursuant to Article 4.4 of the SCL the case was returned to the Special Chamber by the Prishtinë/Priština Municipal Court and is currently pending under the case number C-III-12-1095. Two of the claimants [the Applicants] of this case had filed the claim at hand requesting from the Special Chamber to confirm the Prishtinë/Priština Municipal Court [Judgment P. No. 236/97, dated 16 April 2007] that has been overturned by the Supreme Court [Decision Gzz. No. 36/2007, of 13 December 2007] upon request for protection of legality. However, since the initial case is still pending and it is filed prior to the case at hand, the latter case had to be dismissed pursuant to Article 262.3 and 262.4 of the Law No.03/L-006 on Contested Procedure [...].

The claim therefore fails to meet the admissibility requirements of Section 28.2 of the SCL and is rejected as inadmissible. Accordingly, also the request for Preliminary Injunction is inadmissible.”

28. On 8 April 2013, the Applicants filed an appeal against the Decision of the Specialized Panel of the SCSC with the Appellate Panel of the SCSC. In their appeal, the Applicants requested the Appellate Panel of the SCSC “to quash the appealed decision, to confirm that the decision of the Supreme Court of Kosovo is null and void, to uphold the Judgment of the Municipal Court in Prishtinë/Priština, P. No. 236/07 of 16 April 2007 and to oblige the Cadastral Office in Prishtinë/Priština to implement fully this judgment and to annul all transactions done in the period from 2004 over this subject matter.”
29. On 5 June 2014, the Appellate Panel of the SCSC (Decision, AC-I.13-0041) rejected the appeal of the Applicants as ungrounded and held that:

“The appealed decision is correct and is upheld. Initial claim is still pending with the SCSC under the number C-III-13-1095. Subject matter is the same, because claimant wants to proceed with initial claim by confirming original judgment of Municipal Court in Prishtinë/Priština and parties are same because adding Supreme Court of Kosovo into same procedure with same request makes no difference. In other words the Claimants are requesting that same claim is adjudicated by same judgment. [...].”

Applicant’s allegations

30. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [Justice System] and Article 103 [Organization and Jurisdiction of the Court] paragraph 7.
31. In supporting the alleged violations under Article 31 of the Constitution, the Applicants state that: “the Supreme Court of Kosovo (although Applicants invoked lack of jurisdiction), as an incompetent court, agreed to deliberate on the request of the KPP [Kosovo Public Prosecution], and rendered an unlawful

decision Gzz. No. 36/2007 of 13.12.2007 which had created a permanent situation that has lasted since today.”

32. In addition, the Applicants claim that “[...] *the Appellate Panel of the Special Chamber [...] did not have a regular composition, since it should have consisted of three (3) international judges and two (2) local judges as provided by Article 3, paragraph 12, of the Law No. 04/033 on the Special Chamber of the Supreme Court which is applicable until 01.07.2014.*”
33. In supporting their allegations on excessive length of proceedings the Applicants state that: “*by an unlawful decision of the Supreme Court of Kosovo, and further conduct of the Basic/Municipal Court in Prishtina, a lengthy situation was created, during the period 16.04.2007-13.12.2007-22.06.2012, and further, due to which, the claimants cannot enjoy and dispose freely their property as per final judgment of the Municipal Court in Prishtina, P.no.236/97 of 16.04.2007, which must be enforced as a final judgment [...].*”
34. In regards to the alleged violations under Article 46 of the Constitution, the Applicants state that: “[...] *by a decision of the Supreme Court of Kosovo, an incompetent court in this procedure, Gzz. No. 36/2007 of 13.12.2007, the Court unlawfully annulled the final judgment P. No. 236/97 of 16.04.2007 which made our enjoyment of property impossible [...].*”
35. In regards to the alleged violations under Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution, the Applicants claim that: “[...] *in 2007, the Public Prosecutor and the Supreme Court of Kosovo intervened with the dispute as incompetent institutions [...].*” In this regard the Applicants “[...] *request from the Constitutional Court of the Republic of Kosovo, on basis of Article 25, paragraph 1, in conjunction with Article 182, paragraph 2f, of the Law no. 03/L-006, no. 04/L-118 on Contested Procedure, to resolve the conflict of competencies in this legal matter between the Special Chamber of the Supreme Court of Kosovo and the Supreme Court of Kosovo itself.*”
36. Finally, the Applicants conclude by requesting the following from the Court:

“We propose that the Constitutional Court quashes the decision of the Special Chamber of the SCK, AC-L-13-004/A001 of 05.06.2014, and decision SCC-11-0226 of 20.03.2013, and also the decision of the incompetent court – the Supreme Court of Kosovo, Gzz.no.36/2007 of 13.12.2007.

Upholding the final judgment of the Municipal Court in Prishtina, P.no.236/97 of 16.04.2007 [...].”

Admissibility of the Referral

37. The Court has to examine whether the Applicants have met the requirements of admissibility as foreseen by the Constitution and further specified by the Law and Rules of Procedure.

38. In order to address the Applicants' allegations concerning the alleged constitutional violations, the Court considers that they may be summarized and divided as follows:

A) Allegations regarding the alleged unlawful decision of the Supreme Court [Article 31 of the Constitution];

B) Allegations regarding the excessive length of proceedings [Article 31 in relation with Article 46 of the Constitution of the Constitution];

C) Allegation regarding the Appellate Panel of the SCSC not having a regular composition when deciding on Applicants' appeal [Article 31 of the Constitution];

D) Allegation regarding the alleged incompetence of the Public Prosecutor and the Supreme Court to intervene in the Applicant's case [Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution].

A) As to the Applicants' allegations regarding the unlawful decision of the Supreme Court [Article 31 of the Constitution]

39. As stated above, the Applicants allege a violation of Article 31 of the Constitution by claiming that the Supreme Court of Kosovo "[...] rendered an unlawful decision Gzz. No. 36/2007 of 13.12.2007 which had created a permanent situation that has lasted since today."

40. The Court recalls that it has already reviewed the Applicants' allegations regarding the alleged "unlawfulness" of the Decision (Gzz. No. 36/2007, of December 2007) of the Supreme Court of Kosovo when it decided on Applicants' first referral (see case no. KI 18/10, Constitutional Court, Resolution on Inadmissibility of 17 August 2011) by holding that:

"36. As to the present Referral, the Court notes that it deals with issues, which happened before 15 June 2008 and, thus, fall outside the Court's jurisdiction. The Court would, therefore, have to reject the Referral as incompatible ratione temporis.

37. Even assuming that there might be a continuing situation in the present case, if the violation of the Constitution was caused by an act committed prior to the entry into force of the Constitution and the consequences of that original act still exist, granting the Court jurisdiction to examine the complaint, the Referral is inadmissible.

38. At the proceedings on 13 December 2007, where the Applicants were not present, the Supreme Court allowed the State Prosecutor's Request for Protection of Legality, annulled the Judgment of the Municipal Court of 16 April 2006 and returned the case to the Municipal Court for retrial. So far, the Applicants have not submitted any evidence showing that the Municipal Court has already scheduled a hearing and has taken a decision on the matter, let alone that they have raised the same complaints, at least

implicitly or in substance, before the Municipal Court as they have done before this Court.

39. In this connection, reference is made to Article 113.7 of the Constitution and 47 (2) of the Law, according to which, individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies available under the applicable law.”

41. Therefore, in respect to these allegations, the Court refers to Rule 36 (3) (d) of the Rules of Procedure, which establishes that:

“(3) A Referral may also be deemed inadmissible in any of the following cases:

[...]

(d) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision; [...]”

42. The Court points out that even though, with the present Referral, the Applicants challenge the Decision, AC-I.-13-0041, of the Appellate Panel of the SCSC, the substance of the Applicants’ allegations rests upon their dissatisfaction with the Decision (Gzz. No. 36/2007, of 13 December 2007) of the Supreme Court of Kosovo through which the Judgment (P. No. 236/97, of 16 April 2007) of the Municipal Court in Prishtina was quashed and the Applicants’ case was remand for retrial.

43. In this regard, the Court observes that the allegations under point A) are the same allegations as made in the Applicants’ first Referral and the same have already been dealt by this Court in its Resolution on Inadmissibility in case No. KI 18/10.

44. Consequently, the Court concludes that based on Rule 36 (3) (d) of the Rules of Procedure, it is barred from re-examining the allegations which have been already dealt by the Court.

B) As to the Applicants’ allegations regarding the excessive length of proceedings [Article 31 in relation with Article 46 of the Constitution]

45. The Applicants alleged a violation of Article 31 of the Constitution in relation with Article 46 of the Constitution because according to them *“a lengthy situation was created during the period 16.04.2007 – 13.12.2007 – 22.06.2012 and further”* due to the *“conduct of the Basic/Municipal Court in Prishtina”*.

46. In addition, the Applicants claim that the: *“The Special Chamber of the Supreme Court assigned the case files [...] a new number C-III-12-1095 but since 22.06.2012 and until today, the Chamber has not undertaken any procedural action, again, most likely due to pressure of unlawfully registered owners of the disputed land.”*

47. In reviewing these allegations, the Court draws attention to Article 47 (2) of the Law provides that: “2. *The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by law.*”
48. The Court also refers to Rule 36 (1) b) of the Rules of Procedure which provides that: “(1) *The Court may consider a referral only if: (b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.*”
49. For the purpose of addressing the Applicants’ allegations on excessive length of proceedings and the impact that such alleged length might have had on the Applicants’ other constitutional rights, the Court first recalls its reasoning on case KI 130/11, when it rejected Applicants’ allegations in respect to length of proceedings as premature. Back then, the Court stated that:

“17. [...] the Applicants’ claim, which they are presently making before this Court concerning the excessive length of proceedings, has not been decided yet by the Municipal Court. Therefore, all arguments regarding the alleged excessive length of proceedings should be satisfied by the Applicants’ before the Municipal Court in Prishtina and if they are not satisfied, be raised in appeal before the higher Courts, including the Supreme Court.”

18. It follows, that the Referral is inadmissible pursuant to Rule 36 (3.e) of the Rules of Procedure, however, as stated previously this does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings.”

50. The Court recalls that the European Court of Human Rights regarding the issue of the delay of proceedings before national authorities has established some criteria such as: complexity of the matter, the Applicants’ conduct, the conduct of the relevant authorities, what is at stake for the Applicants, status (stage) of the proceedings etc.
51. In this regard, the Court notes that the Applicants are, in substance, complaining about the conduct of the relevant authorities, namely the Municipal Court in Prishtina and the SCSC.
52. As to the criteria of the conduct of the relevant authorities, the Court evaluates that the Supreme Court of Kosovo remanded the case for retrial to the Municipal Court in Prishtina on 13 December 2007. The latter decided to transfer the case for adjudication to the SCSC on 22 June 2012. Currently, as confirmed by the Specialized Panel of the SCSC and the Appellate Panel of the SCSC the case is still pending.
53. Furthermore, the Court also takes note of the letter that it received from the SCSC regarding the allegations raised by the Applicants in regards to excessive length of proceedings. In its letter directed to the Court, the SCSC stated that:

“[...] The Specialized Panel of the Supreme Court, on 17 April 2013, based on request of the claimants, made a decision on joinder of the proceedings of these two cases and joined case C-III-12-1100 with case C-III-12-1095.”

By the same decision, the Registry of the Special Chamber has been ordered to register this case with a new number for the Liquidation Panel of the Special Chamber. [...] As this case was highly voluminous and dispersed, it was completed in the Registry and on 19 September 2014 was handed over to the Judge. From now on, as regards to this case, the proceeding shall continue in accordance with the rules of the Law on Special Chamber, whereof the parties will be regularly notified.”

54. With regards to the time span from 2007 to 2012, the Court recalls that the Municipal Court provided an explanation which was filed on 22 February 2012 when the Court was assessing the admissibility of Applicants’ second referral, case no. KI 130/11. In its explanation, the Municipal Court had stated that:

“[...] the Court is currently assessing its material jurisdiction considering that the respondent is the Agricultural Cooperative Kosova in all mentioned claims [...] and because in the meantime the Law on Special Chamber of the Supreme Court has entered into force.

I hereby inform you that the case has been assigned to be on December 2010 and due to the complexity of the case and the vast amount of cases that we are currently working with we did not have the possibility do set the session before 2011 as well as because the claimants addresses are in Republic of Serbia which makes the communication harder.”

55. In this regard, the Court notes that no final court decision has been rendered by the SCSC following the decision of the Municipal Court in Prishtina to transfer the adjudication of the case over to the SCSC. In fact, the Appellate Panel of the SCSC (Decision AC-I.-13-0041 of 5 June 2014) rejected the Applicants’ appeal [regarding their parallel claims on the same subject matter] against the Decision (SCC-11-0226 of 23 March 2013) of the Specialized Panel of the SCSC precisely on the reason that the “*claim is still pending*”. More specifically, the Appellate Panel of the SCSC held that:

“[...] Initial claim is still pending with the SCSC under the number C-III-13-1095. Subject matter is the same, because claimant wants to proceed with initial claim by confirming original judgment of the Municipal Court in Prishtinë/Priština [Judgment P. No. 236/97, of 16 April 2007] and parties are the same [...]. In other words, the Claimants are requesting that same claim is adjudicated by same judgment.”

56. In the concrete case, the Court considers that the Referral is to be deemed as premature because the Applicants’ case is still ongoing in a regular judicial procedure and their alleged constitutional violations under point B) are still to be assessed by the regular courts.
57. Under these circumstances and, in particular, in regards to the Applicants’ allegations under point B), the Court concludes that the Applicants have not exhausted all legal remedies available to them, therefore the Court rejects this part of the Referral as premature pursuant to Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure.

C) As to the Applicant's allegation regarding the Appellate Panel of the SCSC not having a regular composition when deciding on Applicants' appeal [Article 31 of the Constitution]

58. In assessing this particular allegation, the Court takes into account Rules 36 (2) d) of the Rules of Procedure which provide that:

*“(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:
[...], or
(d) the Applicant does not sufficiently substantiate his claim.”*

59. In this respect, the Court notes that the Applicants' merely stated that *“the composition of the Appellate Panel of the SCSC consisted of three national judges and two international judges”*, without substantiating his claim as to how this might have violated their right to a fair trial.
60. Considering the above, the Court concludes that the Applicants' allegations under point C) are to be rejected as manifestly ill-founded considering that they have not sufficiently substantiated their claim in regards to their allegation of a violation of Article 31 of the Constitution.

D) Allegation that the Public Prosecutor and the Supreme Court intervened as incompetent institutions [Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution]

61. The Applicants alleged a violation of Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution because according to them: *“In 2007, the Public Prosecutor and the Supreme Court of Kosovo intervened with the dispute as incompetent institutions.”*
62. The Applicants attempt to substantiate their alleged violation by stating that: *“The contested procedure is lead by applicants before the Special Chamber of the Supreme Court on KTA related-matters as the only competent and the highest court in Kosovo on these matters [...]”*
63. In order to put right this alleged constitutional violation, the Applicants request from the Court to *“resolve this conflict of competency in this legal matter between the Special Chamber of the Supreme Court of Kosovo and the Supreme Court of Kosovo itself.”*
64. In this respect, the Court takes into account Rule 36 (3) (e) of the Rules of Procedure which provides that: *“(3) A Referral may also be deemed inadmissible in any of the following cases: e) the Referral is incompatible ratione materia with the Constitution.”*
65. In this regard the Court notes that the issue of resolving *“conflict of competencies”* between the SCSC and the Supreme Court or any other conflict of competencies between regular courts does not fall within the jurisdiction of the Constitutional Court.

66. Consequently, the Court shall reject the allegations made under point D) pursuant to Rule 36 (3) (e) because the request of the Applicants is incompatible *ratione materia* with the Constitution.
67. In conclusion, the Court holds that this Referral should be declared inadmissible for the following reasons:
- i) With regards to allegations under point A), this part of the Referral should be declared inadmissible pursuant to Rule 36 (3) (d);
 - ii) With regard to the allegation under point B), this part of the Referral should be declared inadmissible pursuant to Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure; and
 - iii) With regard to the allegation under point C), this part of the Referral should be declared inadmissible pursuant to Rule 36 (2) (d) of the Rules of Procedure;
 - iv) With regard to allegation under point D), this part of the Referral should be declared inadmissible pursuant to Rule 36 (3) (e) of the Rules of Procedure.

Assessment of the Request for Interim Measure

68. The Applicants also request from the Court to impose an interim measure, namely to prohibit any sale, resale, lease and sublease, construction or placing of any burden on the cadastral parcel that is the main subject of the dispute.
69. In this regard, the Applicants hold that:

“In absence of an Interim Measure on prohibition of ownership charges for the cadastral parcel No. 1536/1, [...] based on the false-null Judgment P. No. 395/96, transferred the ownership rights to M.M. from village Uglare – Municipality of Gracanica and based on null Purchase-Sale Contracts concluded on 19.03.2014 with M.M. and many other natural persons from Prishtina, on 14.05.2012 transferred the ownership rights to new “illegal” buyers. We [...] plead the Court to prevent the resale planned actions and as a matter of urgency, based on our referral-constitutional appeal, logged on 01.07.2014, to impose the proposed:

INTERIM MEASURE

Prohibiting: any sale, resale, lease and sublease, construction and placing of any burden on the cadastral parcel [...] which until 2004 was registered under possession list No. 4011, Prishtina CZ, in the name of the user, AIC “K.E.” Socially Owned Enterprise, whereas from 14.05.2012 it is registered under the name of several illegal private owners, until the final conclusion of this proceeding.

This measure shall be implemented by: the Cadastral office of the Municipality of Prishtina and the competent construction inspectorate of the Municipality of Prishtina.”

70. In this connection, the Court notes that the procedure is still ongoing in the regular courts. Therefore, the Court considers that the request for interim measure is not applicable since it does not meet the requirements set forth by the Law and Rules of Procedure.
71. In order for the Court to allow an interim measure, in accordance with Rules 55 (4) and (5) of the Rules of Procedure, it needs to determine that:

[...]

(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;
(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted;
c) the interim measures are in the public interest.

[...]

5) If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application”.

72. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (1) (b), 36 (2) (d), 36 (3) (d), 36 (3) (e), 55 (4) and (5), and 56 (b) of the Rules of Procedure, on 8 December 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO REJECT the Request for Interim Measures;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court


Kadri Kryeziu




Prof. Dr. Enver Hasani