



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

Pristina, 21 June 2011
Ref. No.: RK123 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 115/10

Applicant

Gjokë Dedaj

**Constitutional Review of the Judgment of the Special Chamber of the
Supreme Court on Kosovo Trust Agency Related Matters, SCC-04-0104,
dated 23 October 2007**

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
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Gjokë Dedaj residing in Peja and represented by Mr. Zef Prenaj, a practicing lawyer in Pristina.

Challenged court decision

2. The Applicant challenges the Judgment of the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters (hereinafter: the "Special Chamber"), SCC-04-0104, of 23 October 2007, which was served on the Applicant on 14 July 2008.

Subject Matter

3. The Applicant requests an assessment of the constitutionality of the Judgment of the Special Chamber, allegedly, to having "committed serious violations of contested procedure, by not inviting parties to the proceeding, by rendering a deficient judgment [...]" and "not given a right to appeal".
4. The Applicant, assuming that the Referral is out of time pursuant to Article 49 and 56 of the Law on the Constitutional Court, further requested the Referral to be returned to the previous situation pursuant to Article 50 of the Law on the Constitutional Court.

Legal Basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (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

6. On 18 November 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
7. On 22 November 2010, the President, by Order No.GJR. 115/10, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Order No.KSH. 115/10, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.
8. On 21 January 2011, the Referral was forwarded to the Special Chamber.
9. On 28 January 2011, the Court requested the Applicant to submit a power of attorney, which he did on 3 February 2011.
10. On 23 May 2011, 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 the facts

11. On 12 August 1993, based on a Public auction opened by the Socially Owned Enterprise "Plant Protection Station" (hereinafter: the "SOE") in Peja, the Applicant bought a commercial premise at the "Rexhep ALibajrami" Street n.n., for the total amount of 40.500 Deutsche Mark (hereinafter: "DM").
12. On 6 July 1994, the Department for Legal and Property Affairs of the Ministry of Finance of the Republic of Serbia rendered a Decision (011 no: 464-08-03056/94) on the request of the SOE to obtain the Department's consent for the transfer of the commercial premise to the buyer (Applicant), pursuant to Article 3.1 of the Law on special conditions of transfer of immovable property (Official Journal of SR Serbia, No. 30/89 and 42/89) and Article 202 of the Law on General Administrative Procedure. The request was rejected, because if granted it would have an impact on the national population structure or resettlement of members of a certain nationality or ethnicity, and such a transfer would cause unrest, or insecurity or inequality between members of different nations or

nationalities pursuant to Article 3 of the Law on special conditions of transfer of immoveable property.

13. On 29 July 2001, the Applicant submitted a request to the Kosovo Trust Agency (hereinafter: the "KTA") to acknowledge the ownership right over the commercial premise.
14. On 13 August 2003, the Applicant initiated the procedure before the Municipal Court of Peja for the certification of the commercial premise.
15. On 31 March 2004, the Municipal Court of Peja transferred the case to the Special Chamber, as competent court under UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency (hereinafter: "UNMIK Regulation 2002/12") and UNMIK Regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter: "UNMIK Regulation 2002/13"), for further adjudication (C. No. 359/03).
16. On 12 July 2004, the Applicant filed a claim with the Special Chamber seeking confirmation of ownership of the commercial premise and registration of it. The KTA was also notified of the initiation of the procedure.
17. On 23 October 2007, the Special Chamber: 1) rejected the claim as ungrounded, 2) declared the sale purchase contract null and void, 3) ordered the Applicant to hand the commercial premise to the SOE, 4) and instructed the SOE to reimburse the Applicant (SCC-04-0104).
18. The Special Chamber reasoned that the transfer of the commercial premise was made following appropriate tender procedures of which the Applicant was the winner and that it had been done in conformity with the provisions of the Law on special conditions of transfer of immoveable property. The Special Chamber further stated that, the Applicant had submitted evidence that he paid, at least, 30.000 Deutsche Mark (hereinafter: "DM") out of 40.500 DM in August 1993. So, the commercial premise should have been transferred to the Applicant. However, this did not happen, because the Department for Legal and Property Affairs of the Ministry of Finance of the Republic of Serbia decided, that such sale was in contradiction with the provisions of the Law on Limitations of Real Estate Transactions, which is no longer applicable, because it is discriminatory legislation, pursuant to UNMIK Regulation 1999/24 on the Law Applicable in Kosovo (hereinafter: UNMIK Regulation 1999/24). Consequently, the commercial premise was sold by the SOE to a third person and a compromise agreement was entered with the Applicant to substitute the ownership of the commercial premise with the ownership of an alternative commercial premise. This was confirmed by the Director of the SOE; however, no original or certified copy of such agreement had been submitted. The Special Chamber ruled therefore that the transfer had not been done in accordance with the Law on the Transfer Property.

Applicants' allegations

19. The Applicant alleges that the Special Chamber has committed serious violations of the Law on Contested Procedure, "by not inviting the parties to the proceedings, by rendering a deficient judgment and by not recognizing the purchase of" the commercial "premise". However, the Special Chamber did confirm the amount paid for the commercial premise instead of recognizing the ownership to the commercial premise.
20. Furthermore, the Applicant complains that he was not given a right to appeal.

Assessment of the admissibility of the Referral

21. The Applicant requests the Court to assess the constitutionality of the judgment of the Special Chamber of 23 October 2007, whereby it had committed serious violations of the

Law on Contested Procedure, by not inviting the parties to the proceedings, by rendering a deficient judgment and by not recognizing the purchase of the commercial premise.

22. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
23. As one of the requirements, the Applicant must establish that he has submitted the Referral within a period of 4 months after the final court decision taken in his case, as stipulated by Article 49 of the Law. However, it appears from the Applicant's submissions that the final court decision regarding his case, was the judgment of the Special Chamber of 23 October 2007, served upon him on 14 July 2008, whereas he submitted his Referral to the Constitutional Court only on 18 November 2010, that is more than 4 months after the entry into force of the Law (see Article 56 of the Law). It follows that the Referral is out of time pursuant to Article 49 of the Law, as it should have been filed with the Court on 15 May 2009.
24. Moreover, pursuant to Article 50 of the Law, providing that:

"If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired."

the Court notes that the final decision was served upon the Applicant on 14 July 2008 and pursuant to Article 50 of the Law, the Referral should have been filed by the Applicant on 14 July 2009, i.e. one year after the final decision had been served upon the Applicant. Since the Referral was filed on 18 November 2010, the Referral is out of time.

25. In these circumstances, the Referral has to be rejected as out of time pursuant to Article 49 in conjunction with Article 56 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Articles 49 and 56 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 21 June 2011, unanimously

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;
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Gjyljeta Mushkolaj

President of the Constitutional Court

Prof. Dr. Enver Hasani