



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

Pristina, 12 June 2017
Ref. No.:RK 1088/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI127/15

Applicant

Mile Vasović

**Request for constitutional review
of the proceedings pending before the regular courts of the Republic of
Kosovo regarding the Case C. No. 850/07
(P. no. 850/07)**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mile Vasović, residing in Belgrade (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge any concrete act of public authorities. He challenges the excessive length of the proceedings regarding the adjudication of Case C. no. 850/07 (P. no. 850/07), by the regular courts of the Republic of Kosovo.

Subject matter

3. The subject matter is related to the Applicant's request for constitutional review of the excessive length of the proceedings by the regular courts regarding the adjudication of Case C. no. 850/07 (P. No. 850/07), as a result of which the Applicant alleges a violation of fundamental rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6, paragraph 1 [Right to a fair trial], Article 14 [Prohibition of discrimination] and Article 1 [Protection of Property] of Protocol 1 of the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 20 October 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 November 2016, the President of the Court by Decision No. GJR. KI127/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President by Decision No. KSH. KI127/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 30 December 2015, the Court notified the Applicant about the registration of the Referral.
8. On 2 September 2016, the Court requested from the Basic Court in Prishtina additional information regarding the case.
9. On 7 September 2016, the Basic Court in Prishtina notified the Court that the civil case C. no. 850/07 (P. N. 850/07), with all the accompanying documents, was submitted to the Special Chamber of the Supreme Court (hereinafter: the Special Chamber) on 14 August 2014.

10. On 16 January 2017, the Court addressed a letter to the Special Chamber, requesting information regarding the status of Case C. no. 850/07 (P. No. 850/07).
11. On 13 March 2017, the Special Chamber notified the Court that the case of the Basic Court, C. no. 850/07 (P. no. 850 / 07), was registered with it as case C-III-14-0211 and is expected to be adjudicated at the first instance of the Special Chamber, by order of priorities.
12. On 5 April 2017, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral inadmissible as manifestly ill-founded on constitutional basis.

Summary of facts

13. From the Applicant's claim it results that on 26 June 1992, the Socially Owned Enterprise "Shock Absorbers Factory" (Decision, No. 2856/1) gave to the Applicant for use the apartment which is located in Dardania neighborhood, Prishtina. On 1 July 1992, the Applicant signed a contract (No. 5117/93) with the housing company for the sale-purchase of the apartment, which contract was certified by the Municipal Court in Prishtina, on 5 July 1993. The Applicant claims to have lived in the apartment until 1999, when he left Kosovo.

Proceedings before the Housing and Property Directorate

14. On an unspecified date (after 1999), the third party SH.V., submitted a claim DS606377 to the Housing and Property Directorate (hereinafter: HPD), claiming that he had lost the right of ownership over the apartment in question as a result of a discriminatory decision on ethnic grounds, issued by the management of the Socially Owned Enterprise "Shock Absorbers Factory".
15. On an unspecified date the Applicant filed claim DS000743 with the HPD, as a C category claimant, as a holder of the property right over the apartment.
16. On 22 October, 2005, the Housing and Property Claims Commission (hereinafter: the HPCC), by Decision HPCC/D/221/2005/A&C, rejected the claim of a third party (A category claimant) and approved the Applicant's claim (C category claimant), by recognizing him the right to possession of the apartment, but not the right to transfer the property to other persons, until the competent court decides on the ownership over that apartment, if a third party regarding his ownership rights over the apartment would address the competent court.
17. In November 2005, the third party requested reconsideration with the KPCC of the earlier decision of the HPCC/D/221/2005/A&C of 22 October 2005
18. On 11 December 2006, the HPCC by Decision HPCC/REC/81/2006 upheld the decision of 22 October 2005, on the grounds that the third party did not present new evidence and due to the fact that the decision did not contain essential flaws during the implementation of UNMIK Regulation 2000/60.

Facts in the court (contested) proceedings

19. On 16 April 2007, the third party filed statement of claim with the Municipal Court in Prishtina, against the Applicant and the Socially Owned Enterprise “Shock Absorbers Factory”. The subject of the statement of claim was the annulment of the sale-purchase contract of the apartment and the restitution of the property right over the apartment.
20. On 17 April 2007, the third party requested the Municipal Court in Prishtina to impose an interim measure, so that the Applicant be prohibited from selling, placing on mortgage and transfer of the apartment.
21. On 30 October, 2007, the Municipal Court in Prishtina (Decision, I. no. 503/07), imposed an interim measure, by which the Applicant was prohibited to sell, place on mortgage and to certify the sale-purchase contract of the apartment. The reasoning of the decision is as it follows: *“Since the creditor, in his proposal for the imposition of the interim measure, of 17 April 2007, made it credible that there was a request and risk that the debtor (the Applicant) would prevent the realization of the claim or make it difficult to do so, the court, based on Article 267 of the LEP, confirmed that the conditions for imposing an interim measure exist, therefore it decided as in the enacting clause of this decision (based on Article 268, item 2 of the LEP).*
22. On 11 September 2009, the Applicant filed an objection with the second instance of the Municipal Court in Prishtina, against the first instance decision of 30 October 2007, arguing that, by Decision HPCC/REC/81/2006 of HPCC is rejected the claim of the third party with regard to the property rights over the apartment.
23. On 1 December 2011, the second instance of the Municipal Court in Prishtina (Decision, I. no. 503/07), rejected as ungrounded the objection of the Applicant, leaving the interim measure into force until the end of the contested proceedings regarding the case C.No.850/07 (P.nr. 850/07), initiated by a third party.
24. On 9 December 2011, the Applicant filed an appeal with the District Court in Prishtina against the second instance decision of 1 December 2011, on the grounds of substantial violations of the contested procedure provisions and violation of the substantive law.
25. On 31 January 2012, the District Court in Prishtina (Decision, Gz. 1459/2011), rejected the Applicant’s appeal as ungrounded and upheld the second instance decision of 1 December 2011.
26. On 27 September 2012, the Municipal Court in Prishtina (Decision, C. No. 850/07 (P. No.850 / 07), regarding the subject of the statement of claim initiated by the third party, declared itself incompetent and decided that case C.No.850/07 (P.nr. 850/07), be referred to the Special Chamber after the decision becomes final.

27. On 4 April 2013, the Applicant submitted an appeal to the Court of Appeal in Prishtina against the first instance court decision of 27 September 2012, on the grounds of essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and incorrect application of the substantive law.
28. In the meantime, on 8 March, 3 April and 27 July 2013, the Applicant addressed with an appeal the Office of the Disciplinary Counsel of Kosovo, claiming that the first instance court is delaying to send the case for decision making to the second instance court.
29. On 7 June 2013, the Office of the Disciplinary Counsel, through the letter KDT/13/541, replied to the Applicant: *“The ODP confirmed that the delay in referring the case, upon the appeal, to the second instance court by the responsible person and administration in the Municipal Court in Prishtina is four months. The delay of four months, in the present case, does not meet the criteria to initiate a disciplinary investigation for misconduct.”*
30. On 31 January 2014, the Court of Appeal (Decision AC. no. 853/13), rejected the appeal of the Applicant as ungrounded and upheld the decision of the first instance court of 27 September 2012, reasoning as it follows:

[...]

“The second instance court, in the created situation, cannot make another determination of factual situation, because we are dealing with a socially owned enterprise, such as “Fabrika e Amortizatorëve” [Shock Absorbers Factory] in Prishtina, which is in the capacity of a respondent, therefore, in such a situation, the competent authority for deciding on this legal matter is exclusively the Special Chamber of the Supreme Court of Kosovo, this being decisively defined also by the relevant provisions of the Law on the Special Chamber o Privatization Agency of Kosovo Related Matters ...”

[...]

31. In December 2014, the Applicant addressed the Special Chamber with a request to accelerate the case C. no. 850/07 (P. no. 850/07). His request was rejected as irregular, because it did not meet the legal requirements to be called a complaint.

Applicant’s allegations

32. The Applicant alleges that unnecessary delay of the proceedings by the regular courts and the failure to render a final decision in his case results in violation of his rights as it follows:

- 1) Violation of Article 31 of the Constitution and Article 6 of the Convention, because : *“The court proceedings regarding the right over my apartment has been conducted for more than eight years and until now, the review of the grounds of the statement of claim, which was filed against me, has not yet begun. All the taken actions and rendered decisions were related either to the decision on the interim measure of the prohibition of*

using the apartment, or the court jurisdiction. For this reason, for more than eight years, I have been prevented from using my own property, and when considering 1999, when I was obliged to leave the apartment, that amounts to 16 years;

2) Violation of Article 46 of the Constitution and Article 1 of Protocol 1 of the Convention, due to non-peaceful enjoyment of property, which is a result of the delay of the proceedings by the regular courts;

3) Violation of Article 24 of the Constitution and Article 14 of the Convention, alleging that: *"...the review of the main matter and the subject of the statement of claim have not begun for 8 years, therefore I pose the question as to whether I am equal before the law just like the other citizens of Kosovo."*

33. In addition to the finding of the alleged violations, the Applicant requests the Court that *"based on found violations of the rights guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, adjudicate the compensation of the material and non-material damage"* and that *"the Kosovo courts be ordered to render a decision on the case for which I file this referral, in the shortest time possible."*

Assessment of the admissibility of the Referral

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

35. First, the Court refers to provisions of Article 113 (7) of the Constitution which establishes:

7. 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."

36. The Court also refers to Article 48 of the Law, which foresees:

"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."

37. In addition, Rule 36 (1) (d) of the Rules of Procedure, provides:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded."

38. Furthermore, Rule 36 (2) (b) of the Rules of Procedure, specifies:

“(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;

[...]

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

39. The Court notes that the essence of the Referral relates to the allegation of violation of the right to a fair trial, namely the violation of the right to a final trial within a reasonable time.
40. In this regard, the Court refers to Article 31, paragraph (2) of the Constitution, in conjunction with Article 6, paragraph (1) of the Convention, to determine:

Article 31 (2) of the Constitution

2) “Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”

[...]

Article 6 (1) of Convention

1) “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

[...]

41. Initially, the Court recalls that Article 6 (1) of the Convention provides that it is for the Contracting States to organize their legal systems in such a way that the competent authorities can meet the requirements of the abovementioned Article of the Convention, including the obligation to hear cases within a reasonable time and, where necessary, join them, suspend them or reject the decision on new proceedings (In addition, see the ECtHR's Judgment in case *Luli and others v. Albania* on 1 April 2014 complaints no. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, paragraph 91).
42. As regards the length of the proceedings, the Court recalls the criteria established in the Judgment of the European Convention on Human Rights (hereinafter: the ECtHR), in case *Tomažič v Slovenia*, of 2 June 2008, complaint no. 38350/02, paragraph 54), where is established as it follows: *“As to the reasonableness of the length of the proceedings, the [ECtHR] reiterates that it must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute.”*
43. Within the meaning of Article 6, paragraph (1) of the Convention, the calculation of the process, the reasonable length of the proceedings, starts to

run when the parties file request with the competent court for the establishment of a right or a legitimate interest claimed (see, case, *Erkner and Hofauer v. Austria* ECtHR, 23 April 1987, paragraph 64; see also ECtHR case *Poiss v. Austria*, 23 April 1987, paragraph 50). This process is considered completed with the issuance of a final court decision by a competent court of the last instance (see case *Eckle v. the Federal Republic of Germany*, ECtHR, of 15 July 1982, paragraph 74).

44. In the present case, the Court notes that we are dealing with two types of proceedings. The proceedings conducted with the HPD, as an independent authority, and the proceedings conducted before the regular courts.
45. As to the proceedings conducted with the HPD, the Court notes that the proceedings with the HPD, was first initiated with the request of the third-party (claim DS606377) and, subsequently, by the Applicant (claim DS000734). However, the date of the initiation of proceedings is not specified by the Applicant and it is not clear from the case file. For the Court, it is clear that the proceedings before this authority were conducted in two instances of review. At the first instance, the proceeding was completed on 22 October 2005, and confirmed on 11 December 2006, after filing the request for reconsideration by the third party.
46. The Court notes that the HPCC gave the apartment in the possession of the Applicant, but prohibited him to transfer the property to other persons, if the third party within the deadline stipulated, would address the competent court regarding his property rights over the apartment. This order remained in effect after the third party filed a claim with the Municipal Court in Prishtina, based on the remedy given in the decision HPCC/D/221/2005/A&C of the said commission, in item 1. (a). According to the abovementioned decision, the Applicant is entitled to possession of the apartment, but not to sale or place on mortgage, until a final decision which would establish the ownership right is rendered.
47. As to the proceedings conducted before the regular courts, the Court notes that, after the case was decided by the HPD, the third party, in addition to filing the statement of claim before the first instance court, has also requested interim measure. The procedure regarding the imposition of interim measure went through three court instances (two in the first and one in the second instance). It was initiated in the first instance court on 17 April 2007 and ended in the second instance court on 31 January 2012. This procedure lasted 4 (four) years and six months.
48. As to the statement of claim, the Court notes that the dispute was initiated by a third party before the first instance court on 16 April 2007, which on 27 September 2012 declared itself incompetent to decide on the merits of the statement claim. This decision was upheld by the second instance court, on 31 January 2014 (after submission of the Applicant's appeal). The proceedings before these two court instances lasted 6 (six) years and ten months.

49. The Court also notes that case C. no. 850/07 (P. no. 850/07) was sent to the Special Chamber, on 14 August 2014, to decide as a competent court. Regarding the status of this case the Special Chamber notified the Court that it is expected to be decided according to the order of priorities. Viewed as a whole, from the first decision of the administrative authority, up to the submission of a Referral to the Constitutional Court, the proceedings lasted eight (8) years and six months.
50. In the present case, the Court notes that in the proceedings before the regular courts appear three parties, namely the Applicant, the third party (SH.V.) and Socially Owned Enterprise "Shock Absorbers Factory". Given that the latter was the socially owned enterprise, PAK also appeared as a party to the Special Chamber. The parties, namely the Applicant and the third party, have taken seven procedural actions (two before the administrative authority and five before the regular courts).
51. In this regard, the Court recalls that applicants are entitled to make use of all relevant domestic procedural steps available by applicable laws, but the applicants should do so with diligence and must bear the consequences when such legal remedies result in delay (See case, *McFarlane v. Ireland ECtHR*, of 10 September 2010, application no. 31333/06, paragraph 148).
52. In addition, the Court considers that the Applicant's conduct constitutes an objective fact, not capable of being attributed to the courts, which is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 31 of the Constitution and Article 6 of the Convention (See case *Eckle v. Germany*, ECtHR, application no. 8130/78, Judgment of 15 July 1982, paragraph 82). The parties to the proceedings are fully equal in using legal remedies available by law, if their purpose is the restoration of a right claimed.
53. The Court, in light of the complex circumstances of this case, taking into account: the complex legal basis, the conduct of the parties to the proceedings, their legitimate interests and legal remedies used by the parties, as well as special procedural obligations that the regular courts have been obliged to apply with respect to this particular case, concludes that the respective courts were not passive from the moment of initiation of the case.
54. Regarding other Applicant's claims, the Court does not consider it necessary to review them separately, as long as the essence of the complaint relates to allegation of violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the Convention, namely the right to a final decision within a reasonable time.
55. From the foregoing, the Court concludes that the Applicant has not sufficiently substantiated his claim for violation of the fundamental rights guaranteed by the Constitution and the Convention, namely the right to a fair trial within a reasonable time, because the facts presented by him do not in any way show that the regular courts have denied him this constitutional right.

56. Therefore, the Applicant's Referral, on constitutional basis and in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure, is to be declared manifestly ill-founded and inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, at its session held on 5 June 2017, unanimously

DECIDES

- I. TO DECLARE the Referral 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;
- IV. This Decision is effective immediately.

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi