



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 3 December 2015
Ref. No.: VMP865/15

DECISION ON INTERIM MEASURE

in

Case No. KI132/15

Applicant

Visoki Dečani Monastery

**Request for constitutional review of two Decisions of 12 June 2015,
Nos. AC-I-13-0008 and AC-I-13-0009, of the Appellate Panel of the
Special Chamber of the Supreme Court of the Republic of Kosovo on
Privatization Agency of Kosovo related matters**

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 Visoki Dečani Monastery (hereinafter: the Applicant), which is represented by Dragutin (Sava) Janjić, Abbot of Visoki Dečani Monastery.

Challenged decision

2. The Applicant challenges two Decisions, Nos. AC-I-13-0008 and AC-I-13-0009, both dated 12 June 2015, 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), which decisions were served on the Applicant on 9 July 2015.

Subject matter

3. The Applicant requests the constitutional review of the two above-mentioned decisions which have allegedly violated the Applicant's rights, as guaranteed by Articles 24 [Equality Before the Law], 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] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 13 [Right to Legal Remedies] of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR).
4. In addition, the Applicant requests from the Court to impose an interim measure, namely that any judicial proceedings, actions or decisions of public authorities in relation to this constitutional complaint be suspended until the final decision of the Constitutional Court (hereinafter: the Court) on this Referral.

Legal basis

5. The Referral is based on Articles 113.7 and 116.2 of the Constitution, Articles 27 and 47 of Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54 and 55 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 03 November 2015 the Applicant submitted the Referral to the Court.
7. On 04 November 2015 the President of the Court, by Decision GJR.KI132/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, by Decision KSH.KI132/15, the President of the Court appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).
8. On 04 November 2015 the Court notified the Applicant of the registration of the Referral. On the same date the Court notified the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Special Chamber) of the registration of the Referral and requested the Special Chamber to provide the Court with a number of enumerated additional documents.

9. On 05 November 2015 the Special Chamber submitted the requested documents to the Court.
10. On 09 November 2015 the Applicant submitted additional documents to the Court.
11. On 12 November 2015 the Judge Rapporteur recommended to the Court to grant an interim measure. On the same date, the Court decided unanimously to grant an interim measure until 29 February 2016.

Brief summary of facts

12. In its submissions, the Applicant states that it was the owner of substantial parcels of land which were confiscated and nationalized by the Socialist Federal Republic of Yugoslavia in 1946.
13. The Applicant submits further that in 1997 the government of the Republic of Serbia made a gift of a portion of this land to the Applicant. This gift concerned a parcel of 23.5 hectares immediately adjacent to the Applicant's premises and an additional parcel of 2 hectares located in the centre of Deçan/Deçane municipality.
14. On 26 April 2000, two Socially-Owned Enterprises, named Iliria and APIKO, respectively, filed a claim with the Municipal Court in Deçan/Deçane against the Applicant, the Municipality of Deçan/Deçane and the Republic of Serbia, requesting the annulment of the gift of land to the Applicant of 1997.
15. Various court proceedings ensued until, on 7 December 2007, the Kosovo Trust Agency (hereinafter: the KTA) applied for the removal of the case from the Municipal Court pursuant to Section 4.5 of UNMIK Regulation No. 2002/13, based on the KTA's exclusive jurisdiction over Socially-Owned Enterprises and their assets.
16. Various proceedings ensued before the Special Chamber. On 27 December 2011, in an interim appeal, the Appellate Panel of the Special Chamber determined that the KTA, as represented by the Office of Legal Affairs of UNMIK, and the Applicant were the exclusive authorized parties to the case.
17. On 27 December 2012, the Specialized Panel of the Special Chamber ruled in two Judgments, No. SCC-0226 and No SCC-0227, with identical text, by which the claims of the Socially-Owned Enterprises were rejected as ungrounded. The Ownership Panel confirmed that the interim decision of the Appellate Panel on authorized representation in the case had become *res judicata*.
18. On 23 and 24 January 2013 respectively, the Privatization Agency of Kosovo (hereinafter: PAK) and the two Socially-Owned Enterprises Apiko and Iliria appealed from judgments Nos. SCC-0226 and SCC-0227. On 29 January 2013 the municipality of Deçan/Deçane joined the appeals.
19. On 12 July 2015, the Appellate Panel rendered the final Decisions Nos. C-I-13-0008/C-I-13-0009. The Appellate Panel decided that: (1) the appeals were

grounded; (2) the judgments of the Specialized Panel Nos. SCC-08-0226 and SCC-08-0227 were annulled; and, (3) the Special Chamber was not competent to adjudicate this dispute. In accordance with this conclusion, the Appellate Panel remanded this matter and the issues in dispute to the Basic Court in Pejë/Peć - Branch in Deçan/Deçane.

Applicant's request and the request for an interim measure

20. The Applicant requests the constitutional review of two Decisions, Nos. AC-I-13-0008 and AC-I-13-0009, both dated 12 June 2015, of the Appellate Panel of the Special Chamber. The Applicant alleges that these decisions violated the Applicant's rights as guaranteed by Articles 24 [Equality Before the Law], 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] of the Constitution, and Article 13 [Right to Legal Remedies] of the ECHR.

21. Regarding the right to a fair trial, the Applicant argues that this was violated in two ways, namely that:

(1) the right to legal certainty was violated in two ways because:

(a) the Appellate Panel admitted certain parties to submit an appeal where the Appellate Panel had previously decided that only the Applicant and the KTA were authorized parties in the case. The Appellate Panel admitted this appeal and adjudicated it on its merits, despite the fact that these parties were not authorized to submit this appeal; and

(b) because the Appellate Panel applied a new interpretation of the applicable laws whereby it decided that the Special Chamber had never had jurisdiction over the case, despite the fact that the Special Chamber, at all levels (in the Trial Panel, Specialized Panel and Appellate Panel), had previously accepted its jurisdiction and had been making decisions on the case since 2008.

(2) the right to a determination of civil rights and obligations within a reasonable time was violated because the proceedings have already taken more than 15 years and now the Special Chamber has referred the case back to the Basic Court where it must be restarted *de novo*.

22. The Applicant also requests the Court to:

"Grant the interim measure in this case, and to prohibit any kind of proceedings by any court or public authority, in the cases related to this constitutional complaint, until the procedure before the Constitutional Court of the Republic of Kosovo is completed."

23. In support of this request for interim measure the Applicant alleges that officials of the cadastral office in the municipality of Deçan/Deçane, without legal basis or authorization, had previously changed the data in the municipal cadastre related to the disputed parcels of land, and registered them in the

names of the newly created Socially-Owned Enterprises Apiko and Iliria. The Applicant also alleges that this cadastral office has refused to implement the binding Executive Decision of the SRSG of 22 August 2008 (UNMIK/ED/2008/16) to return the registration in the cadastre to the previous situation, with the properties to again be registered in the name of the Visoki Dečani Monastery, pending the conclusion of the judicial proceedings.

24. Furthermore, the Applicant claims that:

“There is a real risk that by new acts of the court in Deçan/Dečane, and, in particular, by imposition of interim measures [by the court in Deçan/Dečane], which have already been requested in the proceedings before the [Special Chamber] of the Supreme Court, or by new actions of the cadastre in Deçan/Dečane to the detriment of Visoki Dečani Monastery, which would be implemented through the Basic Court in Deçan/Dečane, the Applicant would suffer unrecoverable damage, [...]”

Assessment of the request for an interim measure

25. In order for the Court to grant an interim measure in accordance with Article 27 of the Law and Rule 55 (4), (5) and (6) of the Rules of Procedure, it must be determined that:

Article 27 of the Law

1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.

Rule 55 (4) of the Rules of Procedure:

[...]

(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; and

(c) the interim measures are in the public interest.

Rule 55 (5) of the Rules of Procedure

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

Rule 55 (6) of the Rules of Procedure (excerpt):

[...] No decision granting interim measures may be entered unless the expiration date is specified; however, expiration dates may be extended by further decision of the Court. [...]

26. In this respect, the Court notes that the Applicant has submitted extensive arguments regarding the alleged violations of its fundamental rights.
27. The Court also notes that the facts of this case reveal a set of legal and judicial proceedings stretching back over a period of more than 15 years, which exhibit significant complexities in the assessment and interpretation of laws given by respective public and judicial authorities.
28. As such, the Court considers that the Applicant has presented a prima facie case on the merits of the referral within the meaning of Rule 55, paragraph 4, under (a), of the Rules.
29. The Court notes that the Applicant claims that it must rely on the ability to cultivate the disputed parcels of land for its sustenance. The Applicant also claims to be concerned about the potential damage that could be caused to its economic well-being as a result of actions that could be taken by the Basic Court or other public authorities with respect to this land.
30. Given these circumstances, the Court considers that there are substantial reasons to accept that the Applicant would suffer unrecoverable damage within the meaning of Rule 55, paragraph 4, under b, of the Rules that warrant a delay in the implementation of any further judicial proceedings regarding the disputed parcels of land pending the Court's final determination on the referral.
31. In addition, the Court is aware that the Applicant has been recognized as a UNESCO World Heritage Site. Furthermore, the Court notes that there are multiple public authorities and semi-public bodies involved this case, and any further decisions in the case could lead to more complications and further unrecoverable damages for various interested parties to the case.
32. In this light, and considering the complexity of the case and the need for a thorough analysis of the alleged violations of fundamental rights, the Court considers that there are also substantial reasons of a public interest nature within the meaning of Rule 55, paragraph 4, under (c) to justify the granting of an interim measure.
33. Therefore, the Court, without prejudice to any further decision which will be rendered by the Court, on the admissibility or merits of the referral in the future, concludes that the request for interim measures must be accepted as grounded in order to prevent unrecoverable damages to the Applicant and to protect the public interest.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law and Rule 55 (4), (5) and (6) and Rule 56 (c) of the Rules of Procedure, on 12 November 2015, unanimously

DECIDES

- I. TO GRANT an interim measure, namely, that any judicial proceedings, actions or decisions of public authorities in relation to this constitutional complaint be suspended;
- II. That this interim measure shall run until 29 February 2016.
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in accordance with Article 20.4 of the Law; and
- V. This Decision is effective immediately.

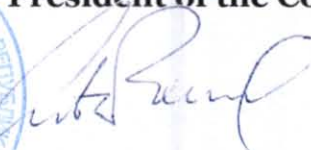
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Arta Rama-Hajrizi