



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

Prishtina, on 25 April 2016
Ref.no.:RK928/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI134/15

Applicant

Ibrahim Alabaki

**Constitutional Review of Judgment GSK-KPA-A-229/2013 of the Appeals
Panel of the Supreme Court of Kosovo of 29 September 2015**

THE CONSTITUTIONAL COURT OF 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
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Ibrahim Alabaki from Pozharan (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment GSK-KPA-A-229/2013 of the Appeals Panel of the Supreme Court of Kosovo (hereinafter, the Appeals Panel) of 29 September 2015 in connection with Decision KPCC/D/R/197/2013 of the Kosovo Property Claims Commission (hereinafter, the KPCC) of 18 April 2013.

Subject Matter

3. Subject matter is the constitutional review of the Judgment GSK-KPA-A-229/2013 of the Appeals Panel of 29 September 2015.

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 Rule of Procedure).

Proceedings before the Constitutional Court

5. On 5 November 2015, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 December 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of judges Altay Suroy, Snezhana Botusharova and Bekim Sejdiu.
7. On 6 January 2016, the Applicant was notified about the registration of the referral and a copy was sent to the Kosovo Property Agency (hereinafter, the KPA) and the Appeals Panel respectively.
8. On 16 March 2016, 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 facts

9. From the documents contained in the referral it transpires that in June 1999 a third party, RI, had entrusted to the Applicant the responsibility, in her absence, of care-taking of her residential property (apartment) in Pozharan. Subsequently, both the Applicant and RI claimed property rights over the property in question.
10. On 13 February 2007, RI filed a property claim with the KPA requesting verification of her property right and re-possession of the residential property (apartment) in Pozharan. RI alleged that she had lost possession of the claimed property as a result of circumstances in years 1998/1999 and backed up her claim by providing, *inter alia*, a copy of the purchase contract, copy of decision on inheritance and written statements of third parties.

11. On 22 June 2007, the Applicant was notified about the claim and there was a finding that he had usurped the property in question.
12. On 22 July 2007, the Applicant claimed legal rights over the contested property and backed up his allegations by providing, *inter alia*, written statements by third parties testifying that RI sold the property to the Applicant in June 1999 and a bill on who made payment of taxes on the property.
13. On 18 April 2013, the KPCC by Decision KPCC/D/R/197/2013 held that RI has verified her property right with regard to the contested property, that RI enjoyed the right of possession of the property in question, and that, whomever had usurped that property must now release it within 30 (thirty) days from the day the decision is served. The KPCC reasoned that RI had substantiated her allegations by providing namely the purchase contract and the decision on inheritance while the Applicant had not produced any documentary evidence to support his claim of ownership of the property.
14. On 19 August 2013, the Applicant filed a complaint with the Appeals Panel. The Applicant alleged, *inter alia*, that KPCC decision is in contravention with the applicable law in Kosovo, that RI had expressed her will to sell the property to him, that evidence adduced by RI is fictitious and that RI is barred by statutory limitations to make a claim on the contested property.
15. On 29 September 2015, the Appeals Panel by Judgment GSK-KPA-A-229/2013 rejected the Applicant's complaint as ungrounded and upheld the decision of the KPCC. The Appeals Panel adopted the holding of the KPCC and reasoned, *inter alia*, that RI filed her property claim within the Statute of Limitations, that the purchase contract and the decision on inheritance produced as evidence by RI are valid, that the Applicant did not provide sufficient and valid evidence to prove ownership over the contested property.

Applicant's Allegations

16. The Applicant alleges violation of Article 46[Protection of Property] of the Constitution.
17. The Applicant alleges that: "*the violation of the property right of the Claimant by the Supreme Court of Kosovo as a fundamental right is expressed in the fact that in the reasoning presented by the Supreme Court, among others, it presents reasons which are completely in contradiction with the material pieces of evidence in this case*".
18. Furthermore, the Applicant alleges that: "*As a first instance Decision (of KPA), as well as the Decision of the Supreme Court of Kosovo – of the second instance, do not contain complete legal reasons for the contested issue of the litigants, and are not decisions based on merit which have been described in detail in the paragraph above*".
19. Finally, the Applicant asks the Court: "*we hereby propose to the Court that due to the violation of the property right and possession right by the Supreme Court of Kosovo, this Claim be granted, by which it is assessed that Judgment*

GJSK – KPA – A – 229 – 2013 of the Supreme Court of Kosovo is unlawful, and is annulled as such. The case is remanded for retrial to the Supreme Court of Kosovo (now the Basic Court in Prishtina – Department for Administrative Cases)”.

Assessment of admissibility

20. 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.

21. In this respect, the Court refers to Article 113.7 of the Constitution which 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.”

22. The Court also refers to Article 48 of the Law which 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”.

23. The Court further takes into account Rule 36 2 (b) of the Rules of Procedure which establish:

“(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 rights guaranteed by the Constitution”.

24. In the Applicant’s case, the Court notes that the Appeals Panel replied to all crucial allegations put forth by the Applicant by clearly explaining the questions of veracity of evidence, applicability of the law with regard to the evidence adduced by the opposing parties and whether a property claim is time-barred by virtue of the Statute of Limitations. Thus, this Court considers that the Applicant’s allegations on contradictory and unreasoned decisions by the Appeals Panel and the KPCC are untenable.

25. The Court considers that allegations of the Applicant namely on the veracity of evidence and the Statute of Limitations are questions of legality which were sufficiently addressed by the Appeal Panel, and as such, do not fall within the realm of constitutionality.

26. In this regard, the Court considers that the Applicant merely refers to a violation of the right to property without explaining accurately how that occurred as is required by Article 48 of the Law.

27. The Constitutional Court recalls that it is not a fact-finding Court. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
28. Moreover, the Referral does not indicate that the Appeals Panel and the KPCC acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
29. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 46 [Protection of Property] guaranteed by the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
30. Bearing in mind all of the foregoing, the Court considers that the presented facts do not justify the allegation of a violation of rights guaranteed by the Constitution.
31. Consequently, the Referral, on a constitutional basis, is manifestly ill-founded and must be declared inadmissible pursuant to Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 16 March 2016, unanimously

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 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Arta Rama - Hajrizi