



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

Prishtina, 31 August 2015  
Ref. No.: RK 834/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI24/15**

Applicant

**Enver Basholli**

**Constitutional Review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters, GSP-KPA-A-158/13, of 19 March 2014**

### **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 is submitted by Mr. Enver Basholli, from Samadrexha, Municipality of Vushtrri (hereinafter, the Applicant).

### **Challenged Decision**

2. The Applicant challenges Judgment (GSP-KPA-A-158/13, of 19 March 2014) of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters (hereinafter, the Appellate Panel), which was served on him on 3 November 2014.

### **Subject Matter**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 31 [Right to Fair and Impartial Trial], Article 6 of the European Convention of Human Rights (hereinafter, ECHR) and Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

### **Legal Basis**

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 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 3 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 21 April 2015, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Bekim Sejdiu.
7. On 12 May 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral to the Appellate Panel and to the Kosovo Property Agency (hereinafter, the KPA).
8. On 1 July 2015, the President appointed herself as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate as Constitutional Judge ended on 26 June 2015.
9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral as inadmissible.

### **Summary of Facts**

10. An apartment in Pristina, owned by the SOE "Elektrokosova", has been occupied since 1986 by a worker (hereinafter, the first worker) of the SOE "Elektrokosova".

11. On 23 November 1990, the first worker's employment relationship with the SOE "Elektrokosova" was terminated and, consequently, the apartment was also vacated.
12. On 28 November 1993, the SOE "Elektrokosova" allocated the apartment for use to another worker (hereinafter, the second worker).
13. On 18 March 1994, the second worker became the owner of the apartment, based on a sale-purchase contract certified in the Municipal Court in Prishtina.
14. On an unspecified date, the first worker filed a claim with the Housing and Property Claims Commission (hereinafter, the HPCC) for the confirmation of the property rights over the apartment.
15. On 13 May 2004, the Applicant eventually purchased the apartment from the second worker by the sale-purchase contract OV. no. 2616/2004, certified in the Municipal Court in Prishtina, .
16. On 22 October 2005, the HPCC (Decision HPCC/D/226/2005/A&C) approved the request of the first worker, recognizing the housing right, which was lost "*as a consequence of discrimination during the period from 23 March 1989 until 24 March 1999*".
17. The Decision of HPCC was rendered as a cover decision related to some claims, wherein, *inter alia*, the claim of the first worker was challenged by the second worker, whereas the claim of the second worker was challenged by the first worker. Both claims were about the apartment in question. The claim of the first worker was decided as grounded, whereas the claim of the second worker was rejected.
18. Moreover, the HPCC decided that the sale-purchase contract Ov. no. 2616/2004, of 13 May 2004, concluded between the second worker and the Applicant "*was inconsistent with Articles 5.1 and 5.2 of UNMIK Regulation 2000/60, and therefore it was invalid*".
19. On 19 December 2005, the second worker and the Applicant filed a request for reconsideration of Decision HPCC/D/226/2005/A&C. The first worker was the responding party to these proceedings.
20. On 31 March 2006, the request for reconsideration was rejected as ungrounded, because "*the Applicants have not presented any new relevant evidence which was not considered by the Commission when deciding on the requests. The Commission has not found any substantial violation in the application of UNMIK/Regulation/2000/60*".
21. On 29 August 2007, the Applicant requested to the KPA the confirmation of his property right over the same apartment, again indicating the first worker as the responding party. The first worker filed an appeal with the Kosovo Property Claims Commission (hereinafter, KPCC).

22. On 22 October 2012, KPCC (Decision KPCC/D/R/175/2012) rejected the Applicant's request, reasoning that this legal matter is *res judicata*, as it was finally decided by Decision of HPCC (HPCC/REC/61/2006), dated of 31 March 2006.
23. On 27 May 2013, the Applicant filed an appeal with the Appellate Panel against that decision of KPCC.
24. On 19 March 2014, the Appellate Panel (Judgment GSP-KPA-A-158/13) rejected the Applicant's appeal as ungrounded and upheld Decision of KPCC (Decision KPCC/D/R175/2012), of 22 October 2012.

### **Applicant's Allegations**

25. The Applicant claims that the proceedings before HPCC and KPCC violated Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 54 [Judicial Protection of Rights] provided by the Constitution, and Article 6 of the ECHR.
26. The Applicant alleges that *"in the court proceedings, the court approved the decision in administrative proceedings, by which the Applicant's right to protection of property, provided by Article 46 of the Constitution, has been denied. This is because the Court has accepted the assessment of the administrative authority in the finding that the legal transaction of the establishment of the property right was taken in violation of the rules of administrative authority."*
27. The Applicant also claims that *"the denial of the right to obtain from the court a final legal reply, constitutes violation of the fundamental right to a fair trial provided for in Article 31" ...* and his right to judicial protection as guaranteed by Article 54 of the Constitution.

### **Admissibility of the Referral**

28. The Court first examines whether the Applicant has fulfilled all the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. In this regard, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.
30. Article 48 of the Law 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".*
31. In addition, Rule 36 of the Rules of Procedure foresees:

*"(1) The Court may consider a referral if: [...] (d) the referral is prima facie justified or not manifestly ill-founded.*

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

32. The Applicant claims that the challenged Judgment has violated his right to equality before the law, to protection of property and to judicial protection rights, as guaranteed by the Constitution.
33. In fact, the Applicant alleges that the HPCC and KPCC, as administrative authorities, have decided arbitrarily on his property right and that *“the court accepted the assessments of the administrative authority”*.
34. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral; he only emphasizes the abovementioned claims, without further explanation on how and why such violations allegedly occurred.
35. In this regard, the Court notes that Decision HPCC/D/226/2005/A&C is reasoned both in terms of recognition of rights to the first worker and also in terms of the contract of sale between the second worker and the Applicant *“which was inconsistent with Articles 5.1 and 5.2 of UNMIK Regulation 2000/60, and therefore it was invalid.”*
36. In addition, the Court notes that the Appellate Panel rejected the Applicant’s request as ungrounded, mainly reasoning that:

*“After the Decision of HPCC dated 22 October 2005 was confirmed by the Decision HPCC/REC/61/2006 dated 31 March 2006, the Decision of HPCC has become final” (...)* and, consequently, *“a new trial between the same parties is not allowed for a legal matter for which a final decision exists”*. (...)  
*“As the case before HPCC was related to the same matter – the apartment, and as it was between the same parties, the case is res judicata”*
37. The Appellate Panel further concluded that *“In accordance with Article 13.6 of UNMIK Regulation no. 2006/50, as amended by Law no. 03/L-079, this Judgment is final and binding and cannot be challenged by regular or extraordinary legal remedies”*.
38. The Court considers that the proceedings before the HPCC and KPCC, and also before the Appellate Panel, were fair and that the decisions were entirely justified and thoroughly reasoned, namely explaining why *“a new trial between the same parties is not allowed for a legal matter for which a final decision exists”*.
39. Therefore, the Constitutional Court considers that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).

40. In addition, the Applicant has not indicated how and why the decision on rejecting his request to repeat the proceedings, based on the existence of *res judicata*, constitute a violation of his individual rights and freedoms.
41. In fact, the Court considers that the Applicant has not provided any *prima faciem* evidence which would point out to a violation of his constitutional rights guaranteed by the Constitution (See: *Vanek vs. Slovak Republic*, No. 53363/99 ECHR, Decision, of 31 May 2005) and he has not specified how the invoked Articles of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
42. Moreover, the Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts, or other public authorities. It is the role of the regular courts or of other public authorities to interpret and apply the pertinent rules of both procedural and substantive law. (See: *mutatis mutandis, Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28. See also case of the Constitutional Court no. KI70/11, *Applicants: Faik Hima, Magbule Hima and Bestar Hima* Resolution on Inadmissibility of 16 December 2011).
43. Therefore, the Court concludes that the Applicant has not substantiated and proved the claim for a violation of his rights to equality before the law, right to fair trial and protection of property.
44. In sum, the Court finds that in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Applicant's allegations are manifestly ill-founded and thus the Referral is inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (1) d) and (2) d) of the Rules of Procedure, on 31 August 2015, unanimously:

### DECIDES

- I. TO DECLARE the Referral as 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; and
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Vjosa Rama-Hajrizi