



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

Prishtina, on 5 November 2015
Ref. no.:RK 854/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI44/15

Applicant

Hava Bajgora, Alban Bajgora and Sylejman Bajgora

Constitutional review of Decision no. 356-65493, of the Inspection Directorate, Construction Sector in the Municipality of Prishtina, of 20 March 2015

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 Applicants are: Ms. Hava Bajgora, Mr. Alban Bajgora and Mr. Sylejman Bajgora from Prishtina (hereinafter: the Applicants), who are represented by Mr. Fatbardh Makolli, lawyer from Prishtina.

Challenged Decision

2. The Applicants challenge Decision (no. 356-65493, of 20 March 2015) of the Inspection Directorate, Construction Sector in the Municipality of Prishtina (hereinafter: the Inspection Directorate).

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicants' rights guaranteed by Article 24 [Equality Before the Law]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 15 April 2015, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 June 2015, the President of the Court, by Decision no. GJR. KI44/15 appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI44/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 5 June 2015, the Court informed the Applicants about the registration of the Referral and requested from them to specify the last decision challenged and to submit other relevant documents regarding the case.
8. On 17 June 2015, the Applicants responded to the request of the Court.
9. On 24 June 2015, the Court sent a copy of the Referral to the Inspection Directorate.
10. On 10 September 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. In 2001, Mr. Shefqet Bajgora, the spouse, now deceased, of the Applicant Ms. Hava Bajgora, and at the same time the father of the Applicants. Mr. Alban and Mr. Sylejman Bajgora, concluded a contract for sale-purchase of a building in Prishtina.

12. On 20 March 2015, the Inspection Directorate (Decision no. 356-65493) ordered the demolition of the building of Mr. Shefqet Bajgora, now deceased spouse, namely deceased father of the Applicants, who, based on the family community certificate attached to the documents of the case, are supposed to be his heirs. In the reasoning of this decision it was stated that:

“[...] Inspector for Construction of the Directorate of Inspection of the Municipality of Prishtina, following the inspection carried out with the minutes of 20.03.2015 found that: the building [...] was seriously damaged and is unprotected, therefore, as such, constitutes a danger to public health, environment and to the residents of the area.

Based on Article 34, paragraphs 1, 2 and 3 of the Law no. 04/L-110 on Construction, Article 17, paragraph 1 and 2 of Article 39, items 3 and 4 of the Law no. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning And Construction, Article 4 and Article 19 para. 6 item 6.1, 6.2 of the Administrative Instruction MESP No. 18/2013 on Minimum Standards and Procedures for Inspection, Supervision and Issuance of Certificate of Occupancy, the inspector for the construction holds that the said object constitutes a threat to environment, endangers the property of others and presents a danger to the lives of others [...]”.

13. In the end of the abovementioned decision, it was stated the following:

“[...] LEGAL REMEDY: Against this Decision, unsatisfied party has the right to appeal within 15 days of receipt of this Decision. The appeal shall be filed with the Appeals Commission in the Municipality of Prishtina.”

Applicant’s allegations

14. The Applicants allege that the Inspection Directorate demolished their building without their knowledge and prior notification, only a day after the challenged decision was rendered and thus violated their rights to equality before the law, the right to legal remedies, the right to protection of property and the right to judicial protection of rights, as guaranteed by the Constitution.
15. The Applicants further allege that by not serving the notice on demolition of their building *“denied them the right to present the facts and evidence or the right to appeal and participation in the administrative proceedings before the Municipality.”*
16. Finally, the Applicants request the Court to annul the challenged decision as *“unconstitutional”* and to *“to remedy the situation caused by the municipal authorities”*, without specifying what they mean by remedy of the caused situation.

Admissibility of the Referral

17. The Court first examines whether the Applicants have met the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
18. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“[...] 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”.
19. The Court also refers to Article 47.2 of the Law, which provides:

“[...] The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”
20. In addition, the Court also refers to Rule 36 (1) (b) of the Rules of Procedure which states:

*“(1) The Court may consider a referral if:
[...]
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*
21. As stated above, the Applicants challenge Decision (no. 356-65493, of 20 March 2015) of the Inspection Directorate, by which was ordered the demolition of their building. The Applicants allege that the Inspection Directorate violated their rights guaranteed by Articles 24, 32, 46 and 54 of the Constitution.
22. In this regard, the Court notes that the challenged decision is the first instance decision in the administrative procedure before the Municipality of Prishtina, and that against it was allowed appeal, which would be reviewed by the Appeals Commission of the Municipality of Prishtina.
23. The Applicants have not submitted to the Court any evidence indicating that they have appealed the challenged decision. In addition, the Applicants have not shown whether they have made any other effort through other legal remedies to exercise their legal and constitutional rights, which have allegedly been violated to them.
24. Therefore, the Court considers that in this case, the Applicants’ Referral is premature, as the proceedings upon the appeal before the second instance authority of the Municipality of Prishtina is still pending, or has not been at all initiated by the Applicants.
25. In addition, the Court notes that there are other legal remedies which the Applicants may exhaust regarding their appeals, and it is their responsibility, to use all effective legal remedies before submitting a Referral for constitutional review of any act, of any public authority before the Constitutional Court.

26. The Court reiterates that the principle of subsidiarity requires that, before addressing the Constitutional Court, the Applicants must exhaust all procedural possibilities in the regular proceedings, in order to prevent violation of human rights and freedoms guaranteed by the Constitution, or to remedy possible violations of rights guaranteed by the Constitution.
27. The rationale for exhaustion rule is to afford the concerned authorities, including the regular courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no.25803/94, Decision of 28 July 1999).
28. In sum, the Court finds that in this case there is no final decision of the competent authority, which in this stage would be subject of review before the Constitutional Court. Therefore, the Court concludes that the Applicants' Referral is premature, due to non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 10 September 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

Bekim Sejdiu



President of the Constitutional Court

Arta Rama-Hajrizi