



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

Prishtina, on 08 August 2016
Ref. no.: 971/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI46/16

Applicant

Gradimir Jovanović and others

Constitutional review of Decision AC-I-14-0318 - A0001, of the Special Chamber of the Supreme Court, of 15 October 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
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Gradimir Jovanović, Trajan Jovanović, Slobodanka Jovanović, Gojko Jovanović, Dragan Jovanović, Ljubiša Jovanović, Olivera Jovanović, Gordana Jovanović, Ljiljana Jovanović, Dejan Jovanović and Miloš Jovanović (hereinafter: the Applicants) from Prishtina, represented by Živojin G. Jokanović, lawyer from Prishtina.

Challenged decision

2. The Applicants challenge Decision AC-I-14-0318- A0001, of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel), of 15 October 2015, in conjunction with Decision SCC-08-0151, of the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel) of 16 September 2014 and Decision AC-10-0063, of the Specialized Panel, of 29 November 2011.
3. The Decision AC-I-14-0318- A0001, of the Appellate Panel of 15 October 2015, was served on the Applicants on 31 October 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violated Article 102, paragraph 3 [General Principles of Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Court).
5. The Court notes that the essence of the Referral raises allegations of the violation of the right to fair and impartial trial and the right to property.

Legal basis

6. 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 Rules of Procedure).

Proceedings before the Constitutional Court

7. On 3 March 2016, the Applicants submitted the Referral through mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 13 April 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan, Almiro Rodrigues and Selvete Gërxhaliu - Krasniqi.
9. On 28 April 2016, the Court informed the Applicants about the registration of the Referral and sent a copy of the Referral to the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber).
10. On 17 May 2016, the Special Chamber submitted evidence on the date the challenged decision was served on the Applicants' representatives.
11. On 14 June 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 16 May 2008, the Applicants filed a complaint with the Special Chamber, requesting the restitution of the land, which according to them, was a property of one of their predecessors C.J. The Applicants noted that their land was taken by the socially owned enterprises: AIC "Kosova – Export"- Plowing and Livestock and Victoria Invest International LLC (hereinafter: SOE) without their consent.
13. On 27 January 2010, the Applicants proposed to the Special Chamber to impose the interim measure, alleging that the challenged property was privatized by the Privatization Agency of Kosovo (hereinafter: PAK), that the new owner has started construction work on those plots and that they will suffer irreparable damage if no interim measure is imposed.
14. On 9 March 2010, the Specialized Panel ordered the Applicants to clarify and supplement their lawsuit.
15. On 2 April 2010, the Applicants responded to the order stating that the lawsuit and supplement of the lawsuit are related to the restitution of land and rejection of the privatization process by the PAK.
16. In the meantime, the responding parties, namely the socially owned enterprises in question had submitted their submissions to the Special Chamber regarding the Applicants' lawsuit.
17. On 27 August 2010, the Specialized Panel by Decision SCC-08-0151 rejected the Applicants' request for imposition of interim measure.
18. The Applicants filed the appeals and requested the Appellate Panel to quash the appealed decision of the Specialized Panel and to approve the proposal for imposition of interim measures.
19. On 29 November 2011, the Appellate Panel by Decision ASC-10-0063 found that the appeal in the procedural terms was permissible but it was ungrounded on merits. The Appellate Panel found that the request for imposition of interim measure was also ungrounded.
20. Meanwhile, the Applicants filed again the lawsuit to the Specialized Panel, by raising allegations, among other things, of their ownership over the challenged immovable property and the right to fair and impartial trial within a reasonable time. The Applicants did not reiterate their request to impose interim measure on the challenged property.
21. On 16 September 2014, the Specialized Panel, by Decision SCC-08-0151 rejected as inadmissible the Applicants' lawsuit. The Specialized Panel, among other things, reasoned that the Applicants intentionally delayed the proceedings by requesting the postponement of hearings, they have not specified their statement of claim and that they were enabled to present the

arguments and facts in their favor, in equal manner with the responding parties during all the proceedings.

22. The Applicants filed an appeal against the aforementioned decision of the Specialized Panel.
23. On 10 October 2015, the Appellate Panel by Decision AC-I-14-0318-A0001 rejected the Applicants' appeals as ungrounded and upheld Decision of the Specialized Panel. The Appellate Panel approved the reasoning of the Specialized Panel, stating that the Applicants primarily have not clarified their statement of claim, they have intentionally delayed the proceedings and that the principle of equality of the parties was respected.

Applicant's allegations

24. The Applicants allege as it follows: *"Pursuant to the claimants' understanding, the first instance court has violated their constitutional rights because in violation to Article 102 paragraph 3 of the Constitution, instead of observing the claimants' rights guaranteed by Article 3. 2 of the Constitution and Article 160 paragraphs 4 and 5 of the Law on the Contested Procedure (hereinafter: LCP), without any ground, based on general conclusions, instead of rendering a Judgment, 6 (six) years after the procedure was initiated, the court rendered a Ruling that found the claim as inadmissible."*
25. The Applicants allege that: *"...The flaws consisted in the procedural complication of the litigation, because the request was continuously expanded and the claimants were asked to specify the number of claimants, who appear as heirs of legal predecessors, and this was done on purpose by the court, to avoid rendering a merited decision. Besides that the claimants proposed the conducting of an onsite visit with the participation of a geodesy expert in order to confirm which part of the property is free and may be restituted to the claimants, because in a strange procedure one part was already used for construction. It is very characteristic that the plots alleged by the claimants, because they belonged to their father or grandfather, were alienated at the price of € 37.00 per are, while the privileged purchaser sold the same land at the price of € 20-30,000.00 per are. This needs no comments."*

Admissibility of the Referral

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

"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."

28. The Court also refers to Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”

29. The Court further takes into account Rules 27 (3) (4) and 36 (1) (c) of the Rules of Procedure, which specify:

*“Rule 27
Calculation of Time Periods*

A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:

(...)

(3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred;

(4) When a period is expressed in months and days, the period shall be first calculated in whole months and then in days;

*Rule 36
Admissibility Criteria*

(1) The Court may consider a referral if:

(...)

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”

30. In the present case, the Court notes that the challenged decision was served on the Applicants on 31 October 2015, whereas the Applicants submitted the Referral to the Court on 3 March 2016; which means that the Referral was served out of the legal deadline of 4 (four) months.

31. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O’Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).

32. In addition, the Court wishes to emphasize that the legal deadline of 4 (four) months is counted from the date when the representative of the Applicants was

served (after the exhaustion of legal remedies), the challenged decision, despite the fact that the Applicants may have received the same challenged decision later. (See, for example, *Case Hatip Çelik v. Turkey*, ECHR, application no. 52991/99, Decision of 23 September 2004).

33. The Court notes that it is the duty of the applicants or of their representatives to act with *due diligence*, in order to ensure that their requests for protection of rights and fundamental freedoms are filed within the legal time limit of four (4) months provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure. (See *Case Mocanu and Others v. Romania* [GC], Application no. 10865/09, 45886/07 and 32431/08, Judgment of 17 September, 2014, paragraphs 263-267).
34. Therefore, the Referral is to be declared inadmissible for review because it is out of time as established in Article 113.7 of the Constitution, as provided for in Article 49 of the Law and further specified in Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, on 14 June 2016, 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; and
- IV. This Decision is effective immediately;

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi