



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

Prishtina, 2 November 2015
Ref. no.: RK 852/15

RESOLUTION ON INADMISSIBILITY

in

Cases Nos. KI47/15 and KI48/15

Applicants

Beqir Koskoviku and Mustafë Lutolli

**Request for constitutional review of Judgment AC-II-14-0057 of the
Special Chamber of the Supreme Court of Kosovo, of 12 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 Mr. Beqir Koskoviku from village Barileva, Municipality of Prishtina, and Mr. Mustafë Lutolli from Prishtina.

Challenged decision

2. The challenged decision is Judgment AC-II-14-0057 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Appellate Panel of SCSC), of 12 March 2015, which was served on the Applicants on 8 April 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which according to the Applicants' allegations violated the rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 46 [Protection of Property].

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law Nr. 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 Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 17 April 2015 the Applicants submitted their Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 June 2015 the President of the Court, by Decision GJR. KI47/15, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Ivan Čukalović (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.
7. On 15 June 2015 the Court informed the first Applicant of the registration of Referral and sent a copy of the Referral to the Supreme Court.
8. On 10 September 2015 the Court informed the second Applicant of the registration of the Referral and on the same date, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referrals KI47/15 and KI48/15 are joined into a single Referral and that the Judge Rapporteur and the Review Panel in both cases (KI47/15 and KI58/15) remain the same as those assigned in Referral KI47/15.
9. On 10 September 2015 the Court informed the parties of the joinder of Referrals and sent copies of the Referrals to the Supreme Court.
10. On 11 September 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of the facts

11. On 21 March 2006 the Applicants' parents B. K. and A. L. (now deceased) filed a claim with the Special Chamber of the Supreme Court of Kosovo for recognition of the ownership right over certain parcels of land located in Fushë-Kosovë. In all further court proceedings, the status of the heir and the legitimacy of the party for representation in proceedings regarding the interest in the parcel, which was the subject of the claim, was recognized to the Applicants.
12. The Applicants alleged that according to an agreement on the land consolidation that was concluded with AIC "Kosova Export" (hereinafter: AIC) in 1981, they received smaller surface area of land than the surface they had given to AIC, and through a lawsuit they intended to implement the agreement in its entirety, requesting to receive the rest of the surface area, which according to them, the AIC had not given to them.
13. On 24 October 2006 the SCSC by Decision SCC-06-0117 referred the case to the Municipal Court in Prishtina.
14. On 7 October 2008 the Municipal Court in Prishtina rendered Judgment C. no. 2272/06, rejecting the Applicant's statement of claim, and on that occasion, among other things, it found: *"According to the assessment of the Municipal Court, the possession for years of the immovable property in question and construction of buildings on the said immovable property does not constitute valid legal ground for acquisition of ownership right on the basis of the land consolidation, in virtue of the provision of Article 20, paragraph 2 of the Law on Basic Property – Legal Relations.*
15. The Court further reasoned: *"This way of acquisition of the ownership right on the abovementioned basis would have been admissible for the court if the claiming parties provided the court with respective decisions rendered by the competent authority on consolidation of the said immovable property. In this situation of the case, the court finds that the statement of claim of the claimants is ungrounded and as such it was rejected in its entirety."*
16. On 22 January 2009 the Applicants jointly submitted an appeal to the District Court in Prishtina against the Judgment of the Municipal Court because of the essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
17. On 8 May 2013 the Court of Appeals received the case file from the Municipal Court in Prishtina and through a submission, along with the appeal, sent the case file to the SCSC for further jurisdiction.
18. On 16 December 2014 the Specialized Panel of the SCSC, by Decision C-III-13-0323, closed the file and ordered the Office for Registration to register the appeal as a case for the Appellate Panel, which was then assigned the number AC-II -14-0057.

19. On 12 March 2015 the Appellate Panel of the SCSC, by Judgment AC-II-14-0057, rejected the Applicant's appeal as ungrounded and upheld Judgment C. no. 2272/06 of the Municipal Court in Prishtina, of 7 October 2008.
20. The Appellate Panel of SCSC by abovementioned Judgment reasoned among others: *“The Appellate Panel considers that by the appealed judgment, no procedural provisions are breached nor the factual situation is erroneously determined as it is alleged by an appeal of the appellants.”*

Applicant’s allegations

21. The Applicants allege that the Judgment of the Appellate Panel of the SCSC has violated the rights guaranteed by the Constitution, and specifically the right to property, because according to them, after a regular process of the land consolidation, they received less surface area of land than they had given.
22. The Applicants requested that the Court annul the Judgment of the Appellate Panel of the SCSC, and remand the case for retrial.

Admissibility of the Referral

23. In order to adjudicate the Applicants’ Referral, the Court should first examine whether the party has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
24. 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.”

25. The Court also takes into consideration Rule 36 (1) d) of the Rules of Procedure which provides:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded

and Rule 36 (2) of the Rules of Procedure which provides:

(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 the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim;

26. As mentioned above, the Court concludes that the Applicants allege that the challenged Judgment has violated his right to protection of property (Article 46 of the Constitution), which has the following content:

Article 46 [Protection of Property]

1. *The right to own property is guaranteed.*
 2. *Use of property is regulated by law in accordance with the public interest.*
 3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
 4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
 5. *Intellectual property is protected by law.*
27. In assessing the allegations made in the Referral, the Court notes that the Applicants have only pointed out the violation of these constitutional provisions, but they have not provided any single piece of evidence as to the manner and nature of the violation, the possible circumstances in which the alleged violation occurred, and they have not explained the constitutional consequences of the alleged violations.
28. The Court considers that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting facts as to the way they were violated, without specifying the circumstances, without specifying and substantiating with valid facts the actions of the public authority that are contrary to constitutional norms, do not constitute sufficient grounds to convince the Court that there has been a violation of the Constitution and of the ECHR.
29. After considering the Applicants' Referral and the facts presented in the Referral, the Court finds that in all stages of the court proceedings, the Applicants' complaints have been of legality character, and that the regular courts responded in an adequate manner to these complaints. The allegations of violations of human rights that are protected by the Constitution have been raised for the first time before the Constitutional Court.
30. The Court further reiterates that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle, does not consider the fact whether the regular courts have correctly and completely determined the factual situation, or if, as in this case, the land consolidation was a regular process and fully implemented

because it is the jurisdiction of the regular courts and in fact, the Municipal Court and the Appellate Panel of the SCSC have adequately responded to these raised allegations in the abovementioned judgments.

31. For the Court essential are the issues, on the existence of which the assessment of possible violations of the constitutional rights depends and not clearly legal issues, as were mainly the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
32. In these circumstances, the Court does not find facts that Article 46 of the Constitution [Protection of Property] was violated or that the challenged Judgment is an indicator of an evident arbitrariness (See, Resolution on Inadmissibility of the Constitutional Court, Case KI128/12, of 12 July 2013, Applicant *Shaban Hoxha*, Request for constitutional review of Judgment Rev. no. 316/2011 of the Supreme Court of Kosovo).
33. In these circumstances, the Court finds that the facts presented by the Applicants do not in any way justify the allegation of violation of the constitutional right to protection of property and, therefore, concludes that the Referral is to be rejected as manifestly ill-founded and be declared inadmissible.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c), 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 11 September 2015, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Alfay Suroy



President of the Constitutional Court



Vjosa Rama-Hajrizi