



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 29 February 2016
Ref. No.: RK898/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI106/15

Applicant

Predrag Stojčetović

**Constitutional review of
Judgment GSK-KPA-A-035/14 of the Supreme Court of Kosovo
Appeals Panel of the Kosovo Property Agency,
of 13 May 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 Bekim Sejdiu, Judge
Selvete Gërxhaliu- Krasniqi, Judge and
Gresa Caka- Nimani, Judge.

Applicant

1. The Referral is submitted by Mr. Predrag Stojčetović, residing in village Biti e Poshtme, Municipality of Shtërpce (hereinafter, the Applicant), who is represented by lawyer Mr. Ljubomir Pantović.

Challenged Decision

2. The Applicant challenges Judgment GSK-KPA-A-035/14 of the Appeals Panel of KPA of the Supreme Court of Kosovo (hereinafter, the Appeals Panel), of 13 May 2015, which rejected as ungrounded the Applicant's appeal filed against the decision KPCC/D/R/215//2013 of the Kosovo Property Claims Commission within the Kosovo Property Agency (hereinafter, the KPCC), of 21 August 2013.
3. The challenged Judgment was served on the Applicant on 3 July 2015.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

5. 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 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

6. On 10 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 14 September 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Artta Rama-Hajrizi and Bekim Sejdiu.
8. On 29 September 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 26 January 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court to declare the Referral as inadmissible.

Summary of facts

10. On an unspecified date, the Applicant requested to the House Property Claims Commission (hereinafter, the HPCC) the confirmation of ownership over an apartment located in Ferizaj.
11. On 30 April 2005, the HPCC (Decision HPCC/D/189/2005/C) rejected the Applicant's request. In the reasoning it is stated that "*Stojčetić did not submit any documentary evidence, by which he would prove the possession over the property, nor he confirmed the property right*".

12. The Applicant requested to the HPCC reconsideration of that decision.
13. On 15 July 2006, the HPCC (Decision HPCC/REC/66/2006) rejected again the Applicant's request for reconsideration with the same reasoning.
14. On 22 August 2007, the Applicant filed a claim with the KPCC (which replaced HPCC), requesting again the confirmation of the property right and repossession of the apartment.
15. On 21 August 2013, the KPCC (Decision KPCC/D/2015/2013) rejected the property claim, reasoning that *"the documents filed by the Applicant were not positively verified by the Executive Secretariat"*. In addition, the KPCC stated that the submitted statements of three witness *"without documented evidences are insufficient to confirm the right of property over the claimed property"*.
16. On 09 December 2013, the Applicant filed an appeal with the Appeals Panel against the KPCC Decision, due to *"erroneous and incomplete finding of the facts"*.
17. On 13 May 2015, the Appeals Panel (Judgment GSK-KPA-A-035/14) rejected the appeal as ungrounded. The Appeals Panel found that *"the KPCC rendered an accurate decision, based on a detailed and accurate procedure"* and that *"there has been no violation or incomplete determination of factual situation"*.

Applicant's allegations

18. The Applicant claims that the challenged Judgment violated Article 24 [Equality before the Law] and Article 46 [Protection of Property] of the Constitution.
19. The Applicant alleges that, *"in a similar factual and legal situation the right of property was acknowledged"* to others. *"This was done in the proceeding before the HPCC, but the Supreme Court of Kosovo completely ignored this fact"*.
20. The Applicant requests the Court *"to recognize him the right to an apartment located in Ferizaj"*.

Admissibility of the Referral

21. 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 Rules of Procedure.
22. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law".

23. 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”.

24. The Court further refers to Rule 36 of the Rules of Procedure, which 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.”

25. The Court recalls that the Applicant claims that the challenged Judgment violated Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution, alleging that his rights were violated because of *“erroneous and incomplete finding of facts”*.

26. The Court considers that the Appeals Panel thoroughly analyzed the evidence presented and the allegations made by the Applicant, reasoning in a detailed manner why his appeal was rejected.

27. In fact, the Appeals Panel noted that *“the Executive Secretariat of the KPCC was not able to provide ex officio any evidence to support the property claim of Stojçetoviq. Based on this, the KPCC has found that Stojçetoviqi did not prove any right whatsoever over the property in the claim”*. Therefore, the Appellate Panel concluded that *“the KPCC rendered correct decision, based on the detailed and accurate procedure”*.

28. Moreover, the Appeals Panel further noted that the Applicant claimed that *“the HPCC rendered a different decision in his case, although absolutely identical cases (DS003510 and DS603418), possession acquired on the same date, and in these cases the HPCC rendered a decision to their benefit”*. The Applicant also claimed that, *“regardless of the same nature of documents that were submitted in these cases by the applicants, the HPCC accepted those documents but it did not do that in his case.”*

29. The Appeals Panel reiterated that it has *“no competencies over the cases of the HPCC, to review the reasoning of the decisions of HPCC or to assess their accuracy”*. Even more, the Appellate Panel noted that *“Decision HPCC/REC/66/2006 rejected the appellant’s request for the reconsideration of decision HPCC/D/189/2005/C. This means that decision HPCC/D/189/2005/C is final and cannot be challenged with an appeal”*.

30. The Court notes that the conclusion of the Appeals Panel is in conformity with its jurisprudence. (See Constitutional Court, Case no.KI104/10, paragraphs 64 and 74 of the Judgment, of 10 May 2012).
31. Before the foregoing, the Court considers that the Applicant has not explained how and why the conclusion on that he “*did not prove*” his right over the property of the apartment, given in the challenged Judgment, violates his rights to equality before the law and to protection of property.
32. The Court further considers that the proceedings before the KPCC and the Appeals Panel were fair and that the decisions were entirely justified and reasoned, namely explaining that the Applicant “*did not prove any right whatsoever over the property*”. (See case *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
33. Moreover, the Applicant has not submitted any *prima facie* evidence indicating a violation of his constitutional rights. (See *Vanek vs. Republic of Slovakia*, the ECHR Decision on admissibility, no. 53363/99, of 31 May 2015).
34. In fact, the Court notes that the Applicant has not built his claim on a constitutional basis. On the contrary, he based his complaint on “*erroneous and incomplete finding of facts*”. That ground fall under the jurisdiction of the regular courts. In the end, the Applicant concluded his allegation requesting the Court to recognize him “*the right of property over the apartment located in Ferizaj*”.
35. The Court considers that this allegation and request configures a fourth instance appeal submission. In that respect, the Court reiterates that it does not act as a court of fourth instance, in respect to the decisions taken by the regular courts on establishing the facts or applying the substantive law. It is the role of the regular courts 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).
36. The Court further reiterates that it is not its task to consider whether the appellate Panel correctly established the facts or interpreted the applicable law (legality), but consider whether the Appeals Panel infringed individual rights and freedoms protected by the Constitution (constitutionality). (See, for example, Case No. KI72/14, Applicant *Besa Qirezi*, Judgment of 4 February 2015, para.65).
37. Moreover on this point, as a general rule, the establishment of the facts of the case and the interpretation of law are a matter solely for the regular instances whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See *Sisojeva and Others v. Latvia*, [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).

38. Therefore, the Court concludes that the facts presented by the Applicant do not justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his claim.
39. In all, the Referral is manifestly ill-founded on a constitutional basis and thus inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) d) and 2 d) of the Rules of Procedure, in the session held on 26 January 2016, 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



Arta Rama-Hajrizi