



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristina, 5 July 2013
Ref. No.:RK439/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI107/12

Applicant

Jovica Đorđević

Constitutional Review of the Resolution of the District Court in Prishtina
Gž.no.1490-2011, of 26 June 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is Jovica Đorđević, from the village of Kolečica, Municipality of Prishtina (hereinafter: Applicant), represented by lawyer Živojin Jokanović from Prishtina.

The challenged decision

2. The Applicant challenges the final resolution of the District Court in Prishtina Gž. no. 1490-2011, of 26 June 2012, served on the Applicant on 19 July 2012.

Subject Matter

3. The subject matter of the referral filed with the Constitutional Court of Kosovo (hereinafter: Court), on 29 October 2012, is certification of the ownership on four (4) parcels, which are subject of a contract entered into on 29 December 1998.

Legal basis

4. The referral is grounded upon Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 21.4, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: Law), and Rule 56, paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceeding before the Court

5. On 29 October 2012, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo, registered as case no. KI 107/12.
6. On 6 December 2012, the President of the Court appointed Judge Kadri Kryeziu as judge rapporteur, and the Review Panel, composed of Judge Robert Carolan (Presiding), Altay Suroy and Prof. dr. Enver Hasani.
7. On 1 March 2013, the Constitutional Court notified the Applicant and the Basic Court in Prishtina, that the referral was registered as KI 107/12.
8. On 14 May 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts (proceedings before regular courts)

9. On 29 December 1998, presently deceased Ž.D., from the Kolečica Village, Municipality of Prishtina, entered into a contract on exchange of land with the Assembly of the City of Prishtina.

10. By such contract, Ž.Đ. gave the Prishtina City four (4) parcels, at a total surface area of 1,58.86 ha, in which case he received from the City of Prishtina and the Agricultural and Industrial Combine in Fushe Kosova (hereinafter: "KBI-Fushe Kosova") four (4) parcels, with a total surface area of 1,52.15 ha.
11. In the meantime, the Municipality of Prishtina and KBI Fushe Kosova, respectively the legal heir the Privatization Agency, have contested the validity of such contract.
12. On 20 November 2006, the Applicant, who is legal heir of the late Ž.Đ., filed a civil claim with the Municipal Court in Prishtina, against the Municipality of Prishtina and KBI Fushe Kosova, thereby demanding verification of property rights over four (4) parcels which are subject of the Contract [Vr. no. 4149], of 29 December 1998.
13. On 1 November 2007, the Municipal Court in Prishtina approved the statement of claim of the Applicant and rendered a Judgment [P. no. 226/06], thereby certifying the property rights of the Applicant.
14. During the proceeding before the Municipal Court, the respondent, the Privatization Agency alienated three (3) parcels (date of such alienation is not found in case files), which are subject of this dispute, in compliance with Article 5.1, UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency. (see paragraph 30)
15. On an unknown date, the claimant filed a complaint against the Judgment of the Municipal Court [P.no. 2264/06] of 1 October 2007.
16. On 21 May 2008, the District Court in Prishtina rendered a Judgment [GŽ. (Ac) no. 181/2008], thereby partially upholding the Judgment of the Municipal Court [P.no. 2264/06] of 1 October 2007. With the Judgment, the Court certified the property rights of the Applicant only over one parcel, parcel no. 1811, surface area of 0,62.46 ha, while for the three other parcels, the Judgment was annulled, while the case was returned to the Municipal Court for re-decision.
17. During the appellate proceedings before the District Court, the Privatization Agency, pursuant to the same Article 5.1 of the UNMIK Regulation no. 2002/12 alienated also the parcel no. 1811, which was judged to the claimant (Applicant in this case), by Judgment [GŽ. (Ac) no. 181/2008], so that the execution was also impossible to be implemented for the parcel no. 1811.
18. On 4 May 2009, in relation to the objection of the Privatization Agency, by Resolution [P.no. 1144/08] the Municipal Court proclaimed itself incompetent for this legal matter. In its resolution, the Court stated that "only the Special Chamber of the Supreme Court on PAK related matters is competent to resolve this property dispute, and that the procedure of certifying the property rights over four (4) parcels which are subject of the Contract [Vr.no. 4149 of date 29], is transferred to the competence of the Special Chamber of the Supreme Court

of Kosovo on PAK related matters, which shall undertake the proceeding with the case no. **SCC-09-0225.**”

Proceeding related to the request for execution of judgment of the District Court [GŽ (Ac) No. 181/2008]

19. On an unknown date in 2009, the Applicant filed with the Municipal Court a request for a safeguard measure for execution of judgment of the District Court [GŽ. (Ac)no.181/2008], of 21 May 2008, the enacting clause of which only covers the parcel no. 1811.
20. The Applicant requested that pursuant to the law then in force, an interim measure to be imposed on another parcel, parcel no. 1831 CZ Prishtina, which is owned by the claimant, with the surface area of 0.62.46 ha, and that the respondent parties to be prohibited to alienate or lien the mentioned part of the parcels, as a measure of security until the ultimate decision of the Special Chamber of the Supreme Court.
21. On 18 April 2011, the Municipal Court in Prishtina, by resolution [I.No.583/08] rejected the claim of the claimant. In its decision, the Court stated that *“the claim of the claimant is hereby rejected, because pursuant to Article 5.1 of the Law on the Privatization Agency of Kosovo (Law no. 03/1-067), it is provided that the Agency is authorized to manage enterprises in social ownership, independently of them being subject to transformation or not. Pursuant to Article 4.1 of the UNMIK Regulation 2002/13, on the Establishment of the Special Chamber of the Supreme Court of Kosovo on PAK related matters, the exclusive jurisdiction on the claim of the claimant is under the Special Chamber of the Supreme Court of Kosovo”.* (see paragraph 31)
22. On 16 October 2011, in relation to the appeal of the Applicant, the District Court, by resolution [GŽ.no.461-211] approved the appeal, and quashed the decision of the Municipal Court [I.no.583/2008], of 18 April 2011, and returned the case to the Municipal Court for the renewed proceedings and re-decision.
23. On 16 November 2011, by resolution [no.538/08] the Municipal Court rejected again the claim of the Applicant as ungrounded.
24. On an unknown date, the claimant lodged an appeal against the resolution of the Municipal Court [no. 538/08].
25. On 26 June 2012, the second instance court, the District Court in Prishtina, by a final resolution [GZH.no.1490/2011] rejected the appeal of the Applicant as ungrounded, thereby upholding in its entirety the resolution of the Municipal Court [I.no.583/08], of 18 April 2011.
26. On 30 July 2012, the Applicant filed a request for protection of legality with the State Prosecutor of Kosovo, against the final resolution of the District Court [GŽ.no.1490-2011] of 26 June 2011.

27. On 7 August 2011, the State Prosecutor of Kosovo, by letter [ZZZG.no.80-12] notified the Applicant that he found no legal basis for filing the request for protection of legality in this case.

Allegations of the Applicant

28. The Applicant claims that his property rights to have been violated, as per Article 46 (Protection of Property) and Article 54 (Judicial Protection of Rights) of the Constitution of Kosovo.
29. Also, the Applicant claims that Article 22 of the Constitution of Kosovo provides on direct application of international agreements and instruments, thereby emphasizing specifically the Universal Declaration on Human Rights, Articles 8, 10 and 17, which provide on human right for the national courts to protect efficiently the persons from violations of basic rights as guaranteed by Constitution and Laws.
30. The Applicant addresses the Constitutional Court with the following demand:
“That the Court assess the constitutionality and legality of the challenged decision, and to find that his rights, as guaranteed by the Constitution of the Republic of Kosovo, were violated to the detriment of the Applicant, and that the lower instance courts (Municipal Court and District Court in Prishtina) have violated the law on executive procedure to the detriment of the applicant, and that the decisions are unconstitutional”.

Relevant Law

31. Article 5.1 of the UNMIK Regulation no. 2002/12 on the Establishment of the Kosovo Trust Agency;

“The Agency is authorize to govern socially and publicly owned enterprises registered or operating within the territory of Kosovo, and the assets such enterprises have within the Kosovo territory”.

32. Article 4.1 of the UNMIK Regulation 2002/13 on the Special Chamber of the Supreme Court, “The Special Chamber shall have primary jurisdiction for claims or counterclaims in relation to the following”;

“[...]”

d) “Claims involving recognition of a right, title or interest in property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency”.

Assessment of admissibility

33. To be able to adjudicate the referral of the Applicant, the Court must initially verify whether the Applicant has met the admissibility criteria, as provided by Constitution, provided in further detail by the Law on the Constitutional Court and the Rules of Procedure.

34. In this sense, the Court convenes the Article 113.7 of the Constitution, which provides that:

“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”.

35. On the other hand, the Article 47(2) of the Law also provides that:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law...”.

36. Moreover, the Rule 36(1) a) provides that:

“The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted”.

37. The Applicant, in his referral filed with the Constitutional Court, has stated that upon objection by the Privatization Agency, the competence for resolving this property dispute, filed on 4 May 2009, was transferred to the Special Chamber of the Supreme Court, the case was registered as “SCC-09-0225” and that such proceeding is ongoing. The Constitutional Court finds that such allegations of the Applicant are provided in detail with the enacting clause of the Municipal Court decision [P.no.1144/08] of 4 May 2009 (see paragraph 17).

38. The Court notes that on 18 April 2011, the Municipal Court in Prishtina, by decision (I.no.583/08] rejected the request for allowing execution of judgment of the Municipal Court [Gž.(Ac) no.181/2008] as filed by the Applicant. In its decision, the Court stated that “the request of the Applicant is rejected [...] Pursuant to Article 4.1 of the UNMIK Regulation 2002/13 on the Establishment of the Special Chamber of the Supreme Court of Kosovo on PAK related matters, the Special Chamber of the Supreme Court of Kosovo enjoys exclusive jurisdiction on the request of the Applicant.”

39. The Court also notes that during the period between 20 November 2006 and until 4 May 2009, the procedure certifying property rights in this legal matter was undertaken before regular courts, although during that period, the UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency was in force since 13 June 2002, thereby providing the issues of disputes against the Agency. The Article 30.1 of the UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency provides that:

“The Special Chamber shall have exclusive jurisdiction for all suits against the Agency”.

40. The Court reminds that the principle of subsidiarity requires that the Applicant exhausts all procedural remedies in a regular proceeding, in the manner of preventing constitutional violations, if any, and improve on such a violation of basic human rights. In compliance with this, the exhaustion of available remedies according to applicable law has not been made yet.
41. The reasoning of the exhaustion rule is to provide the authorities a possibility to prevent or improve alleged constitutional violations. The rule is grounded upon the assumption that the state order of Kosovo provides efficient remedies against violations of constitutional rights. This is an important aspect of the subsidiary nature of the Constitution (see Resolution on inadmissibility: AAB-RIINVEST University Prishtina v. Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see, *mutatis mutandis*, ECHR, Selmouni v. France no. 25803/94, decision of 28 July 1999).
42. In fact, as a rule, the Constitutional Court shall only intervene when there is a violation of the Constitution, or when the Laws are incompliant with the Constitution, but only after all other remedies available by law.
43. Therefore, the referral, in compliance with Article 113.7 of the Constitution, Article 47(2) of the Law, and Rule 36 (1) a) of the Rules of Procedure, is found to be inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 36 (1) a) and 56 (2) of the Rules of Procedure, in the session of 5 July 2013, unanimously

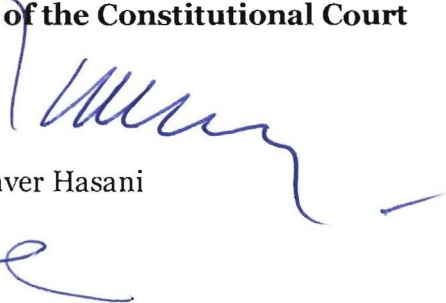
DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur


Dr. Sc. Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

