



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 13 December 2013
Ref. no.: RK517/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI119/13

Applicant

Milija Mirković

**Constitutional review of the Decision of the Appellate Panel of the
Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001,
of 16 May 2013**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Milija Mirković from village Brnica, Municipality of Prishtina (hereinafter: the Applicant), represented by Mr. Shefki Sylaj, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013, which upheld the Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-09-155 of 16 December 2010. That Decision, according to Applicant's allegations, has violated Article 46 of the Constitution of the Republic of Kosovo.

Subject matter

3. The subject matter is constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0003-A0001, of 16 May 2013 which ended a legal property dispute between the Applicant and several legal persons regarding an immovable property, that is cadastral plots No. 622, with surface area of 0.87.83 ha and No. 1387, with surface area of 0.93.31 ha, registered under possession list No. 162, which were taken from Applicant's legal predecessors by Decision on taking of land on 21 December 1964 on the basis of the land maximum.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 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: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 5 August 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. The President, by Decision No. GJR. 119/13 of 30 August 2013, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same day, the President by Decision No. KSH. 119/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 4 October 2013, the Court notified the Applicant and the Supreme Court of the registration of the Referral.
8. On 21 October 2013, after having considered the report of the Judge Rapporteur Arta Rama-Hajrizi, the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

9. On 21 December 1964, by Decision on taking of land on the basis of the land maximum, cadastral plots No. 622, with surface area of 0.87.83 ha and No.

1387, with surface area of 0.93.31 ha, registered under possession list No. 162, were taken from Stanoje Mirković, the legal predecessor of the Applicant.

10. On 10 August 2009, pursuant to 1991 Law on Return of Agriculture Land, the Applicant filed a lawsuit with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters against the respondent AIC "Kosova Export Import" with office in Fushë Kosovë.
11. The Applicant in his claim requested the recognition of the right of ownership over the immovable property, registered as cadastral plot No. 622, at the place called „Deja“, with surface area of 0.87.28 ha and cadastral plot No. 1387, at the place called „Pojatište Lazovi“, with surface area of 0.97.31 ha and the registration of the cadastral plots in his name in the cadastral registers of the Cadastral Office of the Municipality of Prishtina.
12. The Special Chamber of the Supreme Court of Kosovo, by Decision SCC-09-0155, of 1 April 2010, proposed extension of the claim also against the Agricultural Cooperative SOE "Devet Jugovića" in Bardhosh.
13. The Applicant acting as per the court's proposal extended the claim also against the Agricultural Cooperative SOE "Devet Jugovića" in Bardhosh.
14. The extension of the claim was challenged by the representative of the Privatization Agency of Kosovo as the administrator of the socially-owned enterprise (SOE) „AIC Kosova Export“ in Fushë Kosovë and by the representative of the Agricultural Cooperative.
15. By Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-09-155, of 16 December 2010, Applicant's claim was rejected due to lack of passive legitimacy of the first respondent, the socially owned enterprise (SOE) "AIC Kosova Export" in Fushë Kosovë, at the same the Applicant's request to extend the lawsuit against the AC „Devet Jugovića“ was rejected because neither the Privatization Agency of Kosovo as a *de facto* manager of AIC „Kosova Export“ (main respondent) nor SOE „Devet Jugovića“ have given consent in relation to the request for extension of the lawsuit against the new respondent - SOE „Devet Jugovića“.
16. The Applicant filed an appeal against the Judgment of the first instance court, SCC-09-155, of 16 December 2010, to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo. However, the Appellate Panel, by Judgment ASC-11-003-A 001, of 16 May 2013, rejected the appeal for the same reasons, due to lack of passive legitimacy, thereby referring to Articles 192 and 196 of the Law on Contested Procedure, stating that:

“...Articles 192 and 196 of the Law on Contested Procedure are so clear that there is no room for interpretation. The consent of the new respondent is obligatory in order for the claim to be extended against him/her. This does not depend on the Court, as the representative of the claimant said. Furthermore, in case that the respondent has already entered into dispute on the principal matter, the consent of the first/main respondent is also obligatory.”

Applicant's allegations

17. The Applicant considers that *"...for the sake of rationality of the proceedings and just adjudication of the dispute, the extension of the claim should not have been rejected, considering that the filing of a new lawsuit only against the socially owned enterprise "Devet Jugovića" requires expenses and additional time until such lawsuit is adjudicated, and it is very well known the delay of proceedings in the courts."*
18. The Applicant further alleges *"...that in the abovementioned proceedings before the Special Chamber of the Supreme Court of Kosovo the principle of the fair and impartial trial which is guaranteed by the Constitution and the international convention on human rights and freedoms has been violated, taking into consideration that the Court itself proposed extension of the claim against the second respondent, and then it rejected the lawsuit due to lack of passive legitimacy which means that the Court has misled the party, and as a result of that, it rejected the claim, therefore the principle of the fair and impartial trial has been violated."*
19. The Applicant underlines that in this manner Article 46 of Constitution of the Republic of Kosovo which guarantees the right to property has also been violated:

"The claimant's right to property has been violated in an arbitrary manner when his property was taken on the basis of the land maximum and it was transferred to the Fund of Agricultural Land AIC „Kosova Export“, in Fushë Kosovë. The return of this property is guaranteed by 1991 Law on Return of the Land. "

20. The Applicant addresses the Constitutional Court with the following request:

"We request that the Judgment of the Special Chamber of the Supreme Court of Kosovo, SCC-09-0155, of 10.09.2009 and the Decision of the Appellate Panel of SCSCK, ASC-11-0003-A0001, of 16.05.2013, be declared null and void and the case be remanded for reconsideration."

Assessment of the admissibility of Referral

21. The Applicant alleges that Articles 31 (Right to Fair and Impartial Trial) and 46 (Protection of Property) of the Constitution are the basis for his Referral.
22. In order to be able to adjudicate the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
23. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo 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. Under the Constitution, the Constitutional Court is not a court of appeals when reviewing decisions taken by the regular courts. The role of the regular courts is to interpret the law and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz vs. Spain [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
25. The Applicant has not submitted any *prima facie* evidence indicating a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what way Articles 31 and 46 of the Constitution of the Republic of Kosovo support his Referral, as prescribed by Article 113.7 of the Constitution and Article 48 of the Law.
26. The Applicant alleges that his rights (Protection of Property) have been violated due to erroneous application of the law by the Special Chamber of the Supreme Court, without specifying in what manner that Judgment has violated the Applicant’s constitutional rights.
27. In the present case, the Applicant has been provided opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Special Chamber of the Supreme Court of Kosovo and the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo. After having reviewed the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
28. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decision.
29. Consequently, the Referral is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure which provides: *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”*


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2b) of the Rules of Procedure, in its session held on 21 October 2013, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and it shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur


Arta Rama-Hajrizi

President of the Constitutional Court


Prof. Dr. Enver Hasani

