



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

Prishtina, on 17 March 2014
Ref.no.: RK 576/14

RESOLUTION ON INADMISSIBILITY

Case no. KI157/13

Applicant

Emin Maxhuni

**Constitutional review of the
Judgment No. GSK-KPA-A-27/12 of the KPA Appellate Panel of the
Supreme Court of the Republic of Kosovo,
dated of 30 October 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
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was filed by Emin Maxhuni, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Judgment no. GSK-KPA-A-27/12 of the KPA Appellate Panel of the Supreme Court of the Republic of Kosovo, dated of 30 October 2012, (hereinafter, the Challenged decision), which the Applicant claims to have received on 16 September 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated paragraphs 1 and 2 of Article 3 [Equality before Law], in conjunction with Article 24 [Equality before Law]; paragraphs 1 and 2 of Article 31, [Right to Fair and Impartial Trial]; paragraphs 1, 2 and 3 of Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights]; paragraphs 2, 3 and 5 of Article 102 [General Principles of the Judicial System] all of the Constitution, and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, Rules of Procedure).

Proceedings before the Court

5. On 28 October 2013, the Applicant filed his referral.
6. On 28 October 2013, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 12 November 2013, the Court informed on the registration of the referral the Applicant, the KPA Appellate Panel of the Supreme Court, Kosovo Property Agency (hereinafter, KPA), and parties involved in the proceedings.
8. On 14 November 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. In 1991, the Applicant established the private enterprise Marigona Commerce.
10. On 27 November 1996, the enterprise entered into a contract (Contract no.02-2853/1) with the BVI (Bureau of Self-Governing Interests), now the Public Housing Enterprise in Prishtina, for joint investment in relation the construction of two apartments in Prishtina.

11. The Marigona Commerce was active until 1999, when all the assets of the enterprise were destroyed, except the two disputed apartments. As a result, the Applicant had suspended his business. Further, UNMIK Administration (by Regulation 2000/8) required the registration of businesses. However, the Applicant did not register his business.
12. The Applicant did not acquire ownership of the apartments, since the construction of the building with the two apartments in dispute was not concluded. Thus, the Applicant claims that responding parties took illegal possession of the two apartments.
13. On 5 February 2008, the Applicant requested to the KPA the restitution of ownership over two disputed apartments.
14. On 26 October 2011, the Kosovo Property Claims Commission (KPCC) recognized (KPCC/D/R/130/2011) to the Applicant the ownership and possession rights over the two apartments.
15. On 25 May 2012, that decision was served on the responding parties.
16. On 26 May 2012, responding parties filed an appeal with the KPA Appellate Panel of the Supreme Court, arguing that the KPCC decision was based on falsified documentation.
17. On 30 October 2012, the KPA Appellate Panel of the Supreme Court (GJK-KPA-A-27/12) approved as grounded the appeal of responding parties, thereby amending the KPCC decision no. KPCC/D/R/130/2011, of 26 October 2011. The Appellate Panel found that the Applicant *“has not proven his ownership rights or any other property rights over the apartments in dispute”* and then he *“is not entitled to the right resulting from the contract on joint investment for the construction of apartments.”*
18. The KPA Appellate Panel further reasons that, *“The contract related to the financing of the construction of the two contested apartments was not established between the Public Housing Enterprise and the respondent to the appeal as a physical person, but between the Public Housing Enterprise and “Marigona-Commerce” company. This company and its property must be distinguished from the respondent to the appeal and his property as a physical party”*.

Applicant’s allegations

19. The Applicant claims that the challenged decision was rendered in a serious violation of constitutional provisions, due to the fact that the KPA Appellate Panel of the SCSC has decided in an arbitrary and non-transparent manner in resolving this property dispute.
20. The Applicant alleges that the challenged decision violates mainly his right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR

Admissibility of the Referral

21. The Court initially examines whether the Applicant has met the requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.
22. In that respect, the Court refers to Article 113 of the Constitution, which provides that:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
7. 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”.*
23. The Court also refers to Article 48 of the Law which provides that:

“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. In addition, Rule 36 (1) c) and 36 (2) d) of the Rules of Procedures foresees that:

*“(1). The Court may only deal with Referrals if:
[...]
(c) the Referral is not manifestly ill-founded.

(2). The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...]
d) the Applicant does not sufficiently substantiate his claim”.*
25. The Applicant alleges that the KPA Appellate Panel of the Supreme Court has decided in an arbitrary and non-transparent manner in resolving the property dispute. However, the Applicant does not build an argument and present evidence on that alleged violation.
26. The Constitutional Court considers that the Applicant has not accurately clarified how and why the KPA Appellate Panel, when concluding that he *“has not proven his ownership rights (...) over the apartments in dispute”*, violated his rights and fundamental freedoms, namely his right to a fair and impartial trial, as guaranteed by the Constitution and the ECHR.
27. Therefore, the Court considers that the Applicant has failed in sufficiently substantiating and proving his allegation.
28. In addition, the Court notes that the KPA Appellate Panel stressed that *“the contract related to the financing of the construction of the two contested apartments was (...) established between (...) the Public Housing Enterprise and “Marigona-Comerce” company. This company and its property must be*

distinguished from the respondent to the appeal [the Applicant] and his property as a physical party”..

29. Therefore, the Court cannot conclude that the Applicant was arbitrarily deprived of his rights as a party to this property dispute and the challenged decision was rendered in serious violation of the Constitution.
30. In fact, the KPA Appellate Panel found that the Applicant, as a natural person, does not enjoy property rights over the apartments in dispute, as the assets of the enterprise *Marigona-Comerce* cannot be considered to be property of the Applicant. In sum, since the Applicant has not proven that the ownership and possession over the disputed apartments pertained to him personally, no violation to his own personal rights can be considered.
31. Furthermore, the Court cannot act as a court of “fourth instance”, when considering the decision rendered by the KPA Appellate Panel. It is the task of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain*, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).
32. On the contrary, the Court considers that the Applicant has not submitted any evidence that the alleged violation constitute undisputable elements of violation of constitutional rights (See *Vanek v. Republic of Slovakia*, Resolution of the ECtHR on Admissibility of Application, no. 53363/99, of 31 May 2005).
33. Moreover, the Constitutional Court cannot consider as grounded the claim that the proceedings before the KPA Appellate Panel were non-transparent or 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).
34. Therefore, the Court finds that the Applicant has neither substantiated nor proved his claim on a violation of his right to a fair and impartial trial.
35. Consequently, there is no logical and practical need to further examine the other alleged violations (of right to Equality before Law, Protection of Property, Judicial Protection of Rights and General Principles of the Judicial System), as they are subsumed and included in the allegation on the violation of the right to fair and impartial trial.
36. In sum, the Court concludes that the Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure, is manifestly ill-founded and, consequently, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (1) c), rule 36 (2) d) and rule 56 (2) of the Rules of Procedure, on 20 January 2014, unanimously

DECIDES

- I. TO DECLARE the Referral as 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani