



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

Prishtina, 23 May 2014
Ref.no.:RK638/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI210/13

Applicant

Haxhi Morina

**Constitutional Review of the Judgement, AC-II-12-0108, of the
Appellate Panel of the Special Chamber of the Supreme Court of
Kosovo, dated 10 October 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Mr. Haxhi Morina (hereinafter: “the Applicant”) residing in Gjakova, represented by Mr. Rexhep Gjikolli, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Judgement, AC-II-12-0108, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: “the Appellate Panel of the Special Chamber”), dated 10 October 2013, which was served on him on 14 October 2013.

Subject matter

3. The Applicant alleges that the abovementioned judgment violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), namely Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] as well as his property rights guaranteed by Article 17.2 of the Universal Declaration of Human Rights.

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution, Articles 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: “the Law”), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: “the Rules of Procedure”).

Proceedings before the Constitutional Court

5. On 19 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, “the Court”).
6. On 3 December 2013, the President of the Court with Decision No. GJR. KI210/13 appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 11 December 2013, the Court notified the Applicant and the Appellate Panel of the Special Chamber of the registration of the Referral.
8. On 23 January 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Applicant’s earlier case before the Court

9. On 27 November 2012, the Constitutional Court, in the Applicant’s previous Case No. KI68/12, declared his referral for the constitutional review of the Judgment of the Supreme Court, A. no. 313/2009, dated 26 March 2012, inadmissible.
10. In that case, the Applicant alleged that the Special Chamber of the Supreme Court violated his rights as guaranteed by the Constitution. In that respect, the Court found that the Applicant had not exhausted all the legal remedies

available under the applicable law, as required by Article 113.7 of the Constitution and Article 47(2) of the Law, because the case was still pending before the Special Chamber. The proceedings were finalized by adoption of the Judgement, AC-II-12-0108, of the Appellate Panel of the Special Chamber, that the Applicant challenges in the present case.

Summary of facts

11. On 7 May 1981, the Secretariat for Economy and Finances in the Municipality of Gjakova, by Decision 03-465-26/1978, expropriated the Applicant's immovable property (with an area of 0,89.64 ha), for the needs of SH.A.M. "Mustafa Bakija". Pursuant to this decision, this immovable property was registered in the cadastre under the name of SH.A.M. "Mustafa Bakija", Gjakova. This Decision became final on 5 March 1982.
12. The Applicant challenged the Decision on Expropriation before the Supreme Court of Kosovo. However, on 3 March 1982, the Supreme Court rejected his claim.
13. On 2 March 1984, the Applicant was offered the monetary compensation in amount of 627.480 dinars. He rejected the monetary compensation, stating: "*I will not agree to sign without giving me some other land.*" Since the agreement on compensation was not reached in the administrative proceedings, this issue of compensation was referred to the competent court.
14. Despite the fact that the Decision on Expropriation of 7 May 1981 became final, the immovable property expropriated was not used for the set destination, i.e. to construct a polygon for practical exercise of drivers and buses.
15. In this respect the Applicant alleges in his referral that "*... in 1984, although it sought the assistance of the police to take over the factual possession of this immovable property, it did not succeed since the Applicant and his family had cultivated the tobacco in this plot and this ways of using was continued until now.*"
16. On 12 July 1994, the Applicant filed a request to the Directorate of Legal and Property Issues and Land Consolidation of Gjakova Municipality requesting the return of this immovable property because SH.A.M. "Mustafa Bakija" never used the property for the purpose that it was expropriated.
17. On 11 May 2006, the Applicant initiated a procedure with the Special Chamber of the Supreme Court requesting it to confirm the ownership over the contested immovable property.
18. On 24 October 2006, the Special Chamber rendered a decision (SCC-06-0214) whereby the claim against SH.A.M. "Mustafa Bakija" was referred to the Municipal Court in Gjakova for adjudication.
19. On 25 November 2010, the Municipal Court in Gjakova issued Judgment (C. no. 700/06) and rejected the Applicant's claim as ungrounded.

20. In the reasoning the Municipal Court stated, *inter alia*, that the Applicant's request for restitution of the property was submitted out of the 10-year statute of limitation.
21. On 29 June 2011, the Applicant submitted an appeal against the judgment of the Municipal Court to the Special Chamber. In the appeal the Applicant alleged that the challenged judgment contained breaches of provisions of the contentious proceedings, an erroneous and incomplete establishment of the factual situation and a wrong application of the substantive law.
22. On 10 October 2013, the Appellate Panel of the Special Chamber issued the challenged judgment (AC-II-12-0108) whereby the Applicant's appeal was rejected as ungrounded. Accordingly, the judgment of the Municipal Court in Gjakova of 24 November 2010 was confirmed.
23. In the reasoning of this judgment it was mentioned, *inter alia*, "... *The former owner did not agree to the expropriation during the entire expropriation procedure and kept challenged it. His negative attitude culminated on 15 June 1984 at the office... when he stated that he will not hand over the land without sacrificing someone in that place...*". It was further stated that "*The claimant resistance truly compels one to seriously consider acknowledging the right to restitute the ownership and possession of the contested property. However, in this case the law is the main determinant in rendering such decision. It is the Law that determines the criteria, and terms as to how and when the former owner will seek annulment of a final decision on expropriation and regaining his right on an expropriated property.*"
24. The Appellate Panel of the Special Chamber further specified that pursuant to Article 21.3 of the Law on Expropriation, the Applicant was entitled to request cancelling the final decision on expropriation within 3 years from the date the decision was not executed.
25. It further recalled that pursuant to the Article 21.4 of the Law "*after expiration of 10 years from the day the decision had become final, no application may be made for annulment of that decision.*" Finally, the Appellate Panel concluded that "*... from the effective date of this decision until 1994 more than 12 years elapsed, so the Claimant's claim is rejected as unfounded in law, while the appealed judgment should be affirmed.*"

Applicant's Allegations

26. The Applicant alleges that the Supreme Court judgment was taken in violation of Article 24 [Equality Before the Law] of the Constitution and Article 31 [Right to Fair and Impartial Trial]. He also argues that his right guaranteed by Article 17.2 of the Universal Declaration on Human Rights has been violated.
27. In that respects that Applicant alleges that the challenged judgment was adopted contrary to Article 8 of the Law on Construction Land. He further argues that the Law on Expropriation should not be applied in his case but the Law on Construction Land. He argues further that his property was never expropriated and therefore the case at issue should be considered as

“dispossession.” In support of his allegation, the Applicant argues that he was never compensated.

28. The Applicant further argues that there has been a violation of the principle of “equality of arms”, since the 10 year statute of limitation should be equally applicable for both parties in the proceedings.
29. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
30. It is clear from the Applicant's allegations summarized above that the Applicant merely disputes whether the Appellate Panel of the Special Chamber correctly applied the applicable law. The Applicant further disagrees with the Supreme Courts' factual findings with respect to his case.
31. In this regard, the Court notes that the Applicant has used all the available legal remedies prescribed by the Law on Contentious Procedure and that the Appellate Panel of the Special Chamber has taken into account and answered his appeals on the points of law.
32. The Court recalls that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
33. The Court further notes that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005).
34. It follows that the Referral is manifestly ill-founded pursuant to Rule 361. c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded*".

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, in its session held on 23 January 2014, 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 immediately effective.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani