



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 8 April 2014
Ref. No.: RK 595/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI226/13

Applicant

Ali Lushaku

**Constitutional Review of the Judgment GSK-KPA-A-012/13 of the
Supreme Court, Kosovo Property Agency (KPA) Appeals Panel,
of 17 April 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 and
Arta Rama-Hajrizi, Judge

The Applicant

1. The Referral is submitted by Mr. Ali Lushaku, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged Decision is the Judgment GSK-KPA-A-012/13 of the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel, of 17 April 2013 (hereinafter: the Judgment of the KPA Appeals Panel), served on the Applicant on 5 September 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the KPA Appeals Panel, which allegedly violated the Applicant's right to protection of property.

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: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 16 December 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 January 2014, the President, by Decision no. GJR. KI226/13, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.
7. On 30 January 2014, the Court informed the Applicant of the registration of the Referral. On the same date, the Court notified the Supreme Court of the registration of the Referral and requested it to provide a copy of the receipt of service, which shows when the Judgment of the KPA Appeals Panel was served on the Applicant.
8. On 5 February 2014, the Supreme Court submitted to the Court the receipt service, which shows that the Judgment of the KPA Appeals Panel was served on the Applicant on 5 September 2013.
9. On 25 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The Facts of the Case

10. On 1 January 2007, the Applicant submitted a claim to the Kosovo Property Agency (hereinafter: KPA), requesting the recognition of his right of ownership over a business premises, located in Prishtina.

11. On 6 June 2012, the Kosovo Property Claims Commission of the KPA (hereinafter: KPCC), by Decision KPCC-D/C/160, approved the request as grounded.
12. In its Decision, the KPCC held that the Applicant had purchased the property concerned from the Yugoslav Army in January 1999. According to the KPCC, the sales contract was positively verified and consequently the right of property and the right of use were confirmed to the Applicant.
13. On 30 November 2012, the NGO "Mother Theresa" in Prishtina (hereinafter: the NGO), which was using the property concerned, filed an appeal with the Supreme Court, Kosovo Property Agency (KPA) Appeals Panel (hereinafter: the KPA Appeals Panel). The NGO argued that the Applicant has not submitted any valid evidence of the alleged ownership over the property, because the sales contract submitted by the Applicant was not verified by the competent court and not registered in the cadastral registers or any related housing property services.
14. On 17 April 2013, the KPA Appeals Panel in its Judgment GSK-KPA-A-012/13 decided to approve the appeal of the NGO as grounded and to amend the Decision KPCC-D/C/160 of the KPCC dated 6 June 2012, whereby the claim of the Applicant was refused.
15. In its Judgment, the KPA Appeals Panel considered that the Decision of the KPCC of 6 June 2012 was rendered in violation of the substantive law. The KPA Appeals Panel reasoned its Judgment as follows:

[...]

"The KPCC based its request by taking into account that the property was acquired by the contract for property transfer concluded on 21 January 1999 according to the Regulation of Law on Housing Provision for the Yugoslav People's Army, GZ, SFRY, No.84/90. The purpose of this Law was to provide the legal ground for fulfillment of housing needs for the members of the Yugoslav People's Army. In 1999 this Law was no longer applicable. It ceased functioning in 1993. This Law is abrogated by the Law on Property of the Federal Republic of Yugoslavia, GZRFJ 41/1993. The later regulated the acquisition, use and disposal of property that belonged to the Federal Republic, by including the property used by Federal Agencies, such as those that were responsible for defense. Article 18 of the Law in question stipulated that the Federal Minister of Defense in the agreement with the Federal government decides on the acquisition or disposal of residential buildings, apartments, garages and commercial buildings in residential buildings used by the responsible federal agencies for Defense and the Yugoslav Army.

In this case there is no evidence that the contested property was in use by Yugoslav Army."

[...]

Applicants' Allegation

16. The Applicant alleges a violation of Article 46, paras. 1 and 3, [Protection of Property] of the Constitution.
17. The Applicant argues that: [...] *"The Court concludes erroneously that there is no evidence that the contested property was in use by the former APJ [Yugoslav People's Army]. Neither does the finding of the Court stand that the seller is not a competent body to conclude the contract. Likewise Article 4 of the Law on the Transfer of Immovable Property (GZ. SRS no.43/1981) was erroneously applied because the co-validation of the contract or entering into force is made in cases when the seller was the owner and, as such, the contractual obligations are fulfilled. The sale-purchase agreements and evidence of ownership of seller and buyer are verified, which is reflected in the attached extract."*

Admissibility of the Referral

18. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
19. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes 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."
20. In addition, Article 49 of the Law provides that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision"*.
21. In the instant case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the Applicant was served with the Judgment of the KPA Appeals Panel on 5 September 2013 and filed his Referral with the Court on 16 December 2013.
22. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.
23. However, the Court also must take into account Rule 36 of the Rules of Procedure, which provides:

"(1) The Court may review referrals only 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:

[...], or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

(d) when the Applicant does not sufficiently substantiate his claim”.

24. The Applicant alleges that the Judgment of the KPA Appeals Panel violates his right under Article 46 [Protection of Property] of the Constitution by claiming that: [...] *“The Court concludes erroneously that there is no evidence that the contested property was in use by the former APJ [Yugoslav People’s Army]. Neither does the finding of the Court stand that the seller is not a competent body to conclude the contract. Likewise Article 4 of the Law on the Transfer of Immovable Property (GZ. SRS no. 43/1981) was erroneously applied because the co-validation of the contract or entering into force is made in cases when the seller was the owner and, as such, the contractual obligations are fulfilled. The sale-purchase agreements and evidence of ownership of seller and buyer are verified, which is reflected in the attached extract.”*
25. However, the Applicant does not explain how and why the Judgment of the KPA Appeals Panel violated his right guaranteed by Article 46 of the Constitution.
26. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.
27. In this regard, the Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See *inter alia* Case Edwards v. United Kingdom, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
28. Based on the case file, the Court notes that the reasoning given in the Judgment of the KPA Appeals Panel is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the KPA Appeals Panel have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).
29. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional right invoked by the Applicant and the Applicant has not sufficiently substantiated his allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d) of the Rules of Procedure, on 25 March 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani