



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

Prishtina, 23 January 2013
Ref. No.: RK363/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI90/12

Applicant

Ramadan Kastrati

**Constitutional Review of the order SCC-04-0100 of the Special Chamber of the
Supreme Court of Kosovo, dated 18 august 2004**

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

Applicant

1. The Applicant is Ramadan Kastrati (legal representative of his deceased father Q.K.), represented by Isak Islami, a practicing lawyer in Prishtina.

Challenged decision

2. The Applicant asks for review of the order SCC-04-0100 of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the SCSC), dated 18 August 2004.

Subject matter

3. The subject matter of the Referral is the request of the Applicant to stop the sale of a business premise by the Kosovo Privatization Agency (hereinafter: the PAK) which the Applicant claims is his property.
4. The Referral is based on Article 113.7 of the Constitution; Articles 20 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 36 (3) (h) of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Procedure before the Court

5. On 10 September 2012, the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter: the Court).
6. On 13 of September 2012, the Court asked the Applicant to clarify several aspects of his Referral.
7. On 31 October 2012, the Court notified the Applicant about the registration of the Referral and once more asked the Applicant to clarify his Referral.
8. On 2 November 2012, the President appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy, presiding, Almiro Rodrigues and Arta Rama-Hajrizi.
9. On 27 November 2012, the Applicant filed additional documents with the Court.
10. On 17 January 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 the facts as evidenced by the documents furnished by the Applicant

11. On 27 June 1984, the Municipality of Gjilan issued certificate No.04-431/31 by which it certified that Q.K (the deceased father of the Applicant), since 1966, is the owner of a business premise situated in Gjilan.
12. On 8 May 1985, Q.K. reached a written agreement on compensation with the Secretariat for municipal-residential and property-legal affairs in Gjilan, by which the Secretariat was obliged that as a compensation for expropriated land and buildings to give to Q.K. a business premise of 30 square meters.
13. According to the above-mentioned agreement, the obligation to give the business premise to Q.K should have been carried out by the Battery Factory in Gjilan, which in the expropriated land had built, for its own needs, residential buildings which also included business premises.
14. On 7 March 1988, Q.K filed a claim with the Municipal Court in Gjilan, thereby asking the said court to force the respondents (Municipality of Gjilan and Battery Factory in Gjilan), to confer to Q.K the business premise as per written agreement on

compensation dated 8 May 1985. The outcome of this claim is unknown due to lack of documentation and/or due to the fact that several documents in this referral are illegible.

15. On 14 March 1988, Q.K filed a submission with the Executive Council MA Gjilan, thereby explaining that he was damaged in a drastic way by the battery Factory in Gjilan because the business premises conferred to him “was not at all appropriate for work, but for a warehouse”.
16. On 9 October 2003, the Municipal Court in Gjilan by Decision C.nr.529/03 following the proposal to impose interim measures by the plaintiff Q.K. (the deceased father of the Applicant), in relation to expropriation of immovable property(business premise), determined: 1) to impose interim measures, and 2) to prohibit the respondents, the Municipality of Gjilan and Battery Factory in Gjilan, to sell the business premise with a surface of 40 m2 until there was a definitive settlement of the ownership dispute.
17. On 28 June 2004, the Applicant filed a lawsuit with the SCSC against the Municipality of Gjilan and the Battery Factory in Gjilan, thereby asking not to put up for sale the above-mentioned business premises.
18. On 18 August 2004, the SCSC issued a binding order in case SCC 04-0100, thereby stating:

“This claim requests the compensation which comes from expropriation order and a request for the annulment of the same expropriation order if expropriation request will not be approved. Pursuant to the Articles 52 and 53 of the Law on Expropriation in conjunction with Article 139 of the Law on Out of Contentious Procedure this Chamber sends the decision on the quantity and compensation right to Municipal Court. Therefore pursuant to Article 17.2 of UNMIK Administrative Order 2003/13, this court follows this case to respective local court. If any appeal should be filed then it should be filed to Special Chamber”.

“This order is obligatory for the parties and the court to which was followed the case”.

19. On 28 May 2012, The Municipal Court in Gjilan following the lawsuit of the plaintiff Q.K. against respondents Municipality of Gjilan and the Battery Factory in Gjilan pertinent to the verification of property declared: (1) itself incompetent to rule in the said contested procedure; and,(2) the case-file will be sent to SCSC to proceed further as a competent court.
20. On 27 August 2012, the Applicant requested the PAK for non-inclusion of the business premise in the privatization wave.
21. On 11 September 2012, the Applicant filed a submission with the SCSC against the PAK in relation to his request for non-inclusion of the business premises in the privatization wave.

Applicant’s allegations

22. The Applicant alleges that PAK did not consider possession list and copy of the plan of the business premise registered under the Name of Q.K (Applicant’s deceased father).

23. The Applicant alleges that PAK did not consider the ruling of the SCSC (order SCC 04-0100), nor the ruling of the Municipal Court in Gjilan (Decision C.nr.529/03, dated 9 October 2003).
24. The Applicant claims that he has submitted the Referral with the Court for protection of legality with respect to the case No. SCC-04-0100 dated 28 June 2004, SCSC and PAK regarding the ban and non-inclusion of the business premises in the wave of privatization.
25. Furthermore, the Applicant alleges violation of Article 7 [Values] of the Constitution, because the SCSC has issued a ruling without informing neither the owner nor his authorized representative by letter. Furthermore, the Applicant considers the said action by the SCSC as a violation of human rights and freedoms concerning the rule of law.

Assessment of admissibility

26. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
27. As to the Applicant's Referral, the Court refers to Rule 36 (3) (h) which reads as follows:

"A Referral may also be deemed inadmissible in any of the following cases:

(h) the Referral is incompatible ratione temporis with the Constitution."
28. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of constitutional right alleged to have been violated (*see, mutatis mutandis, European Court of Human Rights Chamber Judgment in case of Blečić v. Croatia, Application no.59532/0, dated 8march 2006, para. 82*).
29. The Court notes that the Applicant complains that his property right guaranteed by the Constitution of the Republic of Kosovo has been violated. In that respect the Applicant requires a review of the SCSC order no.04-0100 which is dated 18 August 2004.
30. This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction.
31. The Court, similarly decided in the case KI-100/10 Resolution on Inadmissibility, the Applicant Eduard Thaqi (also known as Sokol Thaqi) – Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002 dated 22 October 2002.
32. It follows that the Applicant's referral is incompatible "*ratione temporis*" with the provisions of the Constitution.

FOR THESE REASONS

The Constitutional Court, Pursuant to Article 113.7 of the Constitution and Article 20 of the Law and in compliance with the Rule 36 (3) h of the Rules of Procedure, on 17 January 2013, unanimously:

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and 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



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani