



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

Prishtina, on 4 December 2017
Ref. No.: RK 1159/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI104/17

Applicant

Naser Berisha

Constitutional review of Decision No. AC-I-15-0265 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 6 April 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Naser Berisha from village Bakshi, Municipality of Obiliq (hereinafter: the Applicant), who is represented by Gani Asllani, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision No. AC-I-15-0265 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 6 April 2017.
3. The challenged decision was served on the Applicant on 30 May 2017.

Subject matter

4. The subject matter is the constitutional review the challenged decision, which allegedly violates the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 1 [Protection of Property] of Protocol No. 1 of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 25 August 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On the same date, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 6 September 2017, the Court notified the Applicant and the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) about the registration of the referral and requested him to present evidence regarding date of receipt of the challenged decision by the Applicant. On the same date, the Referral was sent to the Privatization Agency of Kosovo (hereinafter: the PAK).
9. On 8 September 2017, the Court received confirmation of the date on which the challenged decision was served on the Applicant.
10. On 14 November 2017, 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

11. On 14 February 2007, the Applicant filed a claim against R. C. and Socially-Owned Enterprise KBI “Kosova Export”, Municipality of Fushë Kosovë (hereinafter: Socially Owned Enterprise) for the return of several land plots in the village of Bakshi, Obiliq, which were allegedly confiscated from Mr. Z. Z., the predecessor of the Applicant's father.
12. On 6 February 2009, the Basic Court in Prishtina (Decision C. No. 231/2007) declared itself incompetent to decide the case and the claim was sent to the Specialized Panel of the Special Chamber on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel).
13. On 12 April 2011, the Specialized Panel (unspecified Decision) rejected the statement of claim regarding the Applicant R.C. as inadmissible.
14. On 26 April 2011, PAK, as a representative of the socially owned enterprise, filed a request for suspension of proceedings in this case as the socially owned enterprise was subject to the liquidation procedure.
15. On 21 November 2011, the Specialized Panel (Decision No. SCC-09-0217) rejected as ungrounded the request of the PAK to suspend the proceedings regarding the Applicant's claim.
16. On 18 December 2014, the Appellate Panel (Decision ASC-11-0108) rejected as ungrounded the PAK appeal against the Decision (No. SCC-09-2017) of the Specialized Panel.
17. On 26 October 2015, the Specialized Panel (Decision SCC-09-0217) rejected the Applicant's claim as inadmissible “*as the claimant failed to provide the Decision on inheritance of heirs of Z.Z.*” to prove their active legitimacy in the present case.
18. On 24 November 2015, the Applicant filed an appeal against the Decision of the Specialized Panel (SCC-09-0217) with the Appellate Panel “*on the grounds of violation of the substantive law.*”
19. On 6 April 2017, the Appellate Panel (Decision AC-I-15-0265) rejected as ungrounded the Applicant's allegation. The Appellate Panel, by upholding the Decision of the Specialized Panel, *inter alia*, reasoned that:

*“Based on the minutes of the hearing session, it is very clear that the claimant was informed that he should bring the decision on the inheritance, but the claimant failed to do so, arguing that the disputed property is in the name of the [socially owned enterprise], therefore, the Decision on inheritance cannot be obtained.
[...]*

The complainant even upon his appeal in the appeal proceeding did not bring the decision on inheritance. In the appeal he claimed that the request to bring such a decision for proving the active legitimacy, according to

him, was unlawful because his predecessor [Z.Z.] was seized his property [...] and he has had no property to inherit.

The Appellate Panel cannot accept such a justification of the claimant for failing to provide the requested Decision on inheritance, since under Article 157 of the Law on Out-Contentious Procedure, the inheritors have the right to request the Decision on inheritance even if there is no property to inherit”.

Applicant’s allegations

20. The Applicant alleges that the Appellate Panel (Decision No. AC-I-15-0265) violated the rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution and Article 1 [Protection of Property] of Protocol No. 1 of the ECHR.
21. The Applicant specifies that the disputed parcels have been alienated “*since 1984-85 when the regulation of the agricultural land was carried out by consolidation, while up to this time they have been private property in the name of the father of the claimant, but were in arbitrary manner, without any legal grounds, illegitimately given in possession and use of the colonists brought from other parts of the former Yugoslavia*”.
22. The Applicant alleges that the Socially Owned Enterprise “*represented by the Privatization Agency of Kosovo does not have any legal ground to keep as owner the cadastral parcels [...] which it has acquired without any legal grounds, [...] and contrary to the European Convention for Human Rights, and Protocol 1, Article 1 [Protection of Property]*” Article 46 of the Constitution and the laws on property of the Republic of Kosovo.
23. The Applicant also alleges that “*the Special Chamber of the Supreme Court of Kosovo by its decisions has legitimized all violations committed in the monistic system contrary to all aforementioned acts, and thus without any legal grounds has made the abovementioned expropriators*”.
24. Finally, the Applicant requests the Court to annul the Decision of the Appellate Panel and the disputed parcels “*be returned for use*” to the Applicant.

Assessment of the admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
26. In this respect, the Court, initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

*“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”.

27. The Court also refers to Article 49 [Deadlines] of the Law, which foresees:

“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

28. In the present case, the Court notes that the Applicant filed the Referral as an individual and as an authorized party, he submitted the Referral in accordance with the deadlines prescribed in Article 49 of the Law, after exhaustion of all legal remedies provided by law.

29. However, the Court refers to Article 48 [Accuracy of the Referral] 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”.

30. The Court also refers to paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which specify:

(1) “The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

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

31. The Court recalls that the Applicant alleges that the Appellate Panel (Decision AC-I-15-0265) violated the right to fair and impartial trial and the right to protection of property.

32. In this respect, the Court notes that the Applicant alleges that the Appellate Panel, by rejecting the Applicant's claim as ungrounded, has legitimized the confiscation, without legal basis, of the property of the Applicant's predecessors.

33. The Court recalls that the Appellate Panel rejected the Applicant's appeal against the Specialized Panel for procedural reasons, since the Applicant did not submit the inheritance decision to prove his active legitimacy in relation to the claim for return of the disputed parcels and that did not deal specifically with the essence itself of the Applicant's Referral.

34. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the Supreme Court when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Judgment of European Court on Human Rights (hereinafter: the ECHR] of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, para. 28).
35. The role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Court cannot act as “*fourth instance court*” (see: ECtHR Judgment of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, para. 65; see also, *mutatis mutandis*, case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
36. In fact, the Court notes that the Appellate Panel assessed the interpretation of the Specialized Panel regarding the procedural provisions regarding the active legitimacy of the Applicant.
37. The Appellate Panel during the assessment of the Applicant's allegations argued that the Specialized Panel rightly dismissed the Applicant's claim, because the Applicant did not submit the inheritance decision to prove the active legitimacy regarding the disputed parcels.
38. The Appellate Panel further addressed the Applicant's allegation that it was not possible to conduct the inheritance proceedings concerning the predecessor of Applicant Z.Z, as he had no property to inherit, arguing that “*under Article 157 of the Law on Out-Contentious Procedure, the inheritors have the right to request the Decision on inheritance even if there is no property to inherit*”.
39. The Court considers that the conclusions of the Appellate Panel were reached after a detailed examination of all arguments submitted by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the proceedings the arguments and evidence which he considered relevant to his case.
40. All the arguments of the Applicant, which were relevant to the resolution of the dispute regarding the active legitimacy of the Applicant in the present case, were heard and properly assessed by the courts. All material and legal reasons related to the challenged decision were presented by the Applicant in detail and the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair (See, *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 29 and 30).
41. As to the alleged violations of the Applicant with regard to the right to protection of property, the Court recalls that the right to protection of property applies only to a person's existing possessions and that it does not guarantee the right to acquire possessions (see: *mutatis mutandis*, case of ECtHR *Marckx v. Belgium*, No. 6633/74, Judgment of 13 June 1979, paragraph 50).

42. In certain circumstances a “*legitimate expectation*” of obtaining an asset may also enjoy the protection of Article 46 of the Constitution and Article 1 of Protocol No. 1 of ECHR (see, *mutatis mutandis*, *Bélané Nagy v. Hungary*, No. 53080/13, Judgment of 13 December 2016, § 74).
43. However, the Court recalls that a “*legitimate expectation*” must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision. No “*legitimate expectation*” can be said to arise where there is a dispute as to the correct interpretation and application of law and the applicant’s submissions are subsequently rejected by the regular courts (see, *mutatis mutandis*, *Bélané Nagy v. Hungary*, *Ibidem*, § 75).
44. Accordingly, the Court considers that the circumstances of the case did not give the Applicant the right to a material interest protected by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR.
45. In sum, the Court considers that the Applicant has not presented any evidence, facts or arguments that show that the proceedings before the Appellate Panel have constituted in any way a constitutional violation of his rights guaranteed by the Constitution, namely the right to fair and impartial trial and right to protection of property.
46. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS,

The Constitutional Court of Kosovo, in accordance with Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 14 November 2017, unanimously

DECIDES

- I. TO DECLARE the Referrals 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; and
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur

Selvete Gërxhaliu-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi