



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

Prishtina, on 26 December 2017
Ref. No.: RK 1179/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI120/17

Applicant

Hafiz Rizahu

**Constitutional review of Decision No. AC-I-17-0132
of the Appellate Panel of the Special Chamber of the Supreme Court of
Kosovo on the Privatization Agency of Kosovo Related Matters,
of 1 August 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
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Hafiz Rizahu from village of Malisheva, Municipality of Gjilan (hereinafter: the Applicant), who is represented by Halit Azemi, lawyer from Gjilan.

Challenged decision

2. The Applicant challenges Decision No. AC-I-17-0132 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 1 August 2017, and Judgment No. AC-II-12-0006, of the Appellate Panel, of 8 December 2016.
3. The Decision No. AC-I-17-0132 of the Appellate Panel was served on the Applicant on 7 August 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions which allegedly violate the Applicant's rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22 [Processing Referrals] and Article 47 [Individual Requests] of Law No. 03/L-121 on the 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 10 October 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 12 October 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
8. On 16 October 2017, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit to the Court the power of attorney to represent the Applicant before the Court.
9. On the same date, the Referral was sent to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) and the Privatization Agency of Kosovo (hereinafter: PAK).
10. On 30 October 2017, the Applicant's representative submitted the power of attorney proving that he was authorized to represent the Applicant before the Court.
11. On 7 December 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

12. On 9 February 2006, the Applicant filed a claim with the Special Chamber against the Socially-Owned Enterprise N.Sh-KBI "Agrikultura" from Gjilan (hereinafter: the Socially-owned Enterprise) for the release and delivery of possession to the Applicant of the cadastral parcel no. 1651, at the place called "Zabeli i Sahit Agës" registered in the possession list with no. 7267, MA of Gjilan (hereinafter: the disputed parcel), claiming that the socially-owned enterprise had occupied illegally his property and had built chicken farm in it.
13. On 22 March 2006, the Special Chamber by Decision [No. SCC-06-0051] referred the claim to the Municipal Court in Gjilan (hereinafter: the Municipal Court). The parties were advised that any appeal against the Judgment of the Municipal Court should be submitted to the Special Chamber.
14. On 21 February 2011, the socially owned enterprise filed a counterclaim against the Applicant requesting the recognition of property rights over the disputed parcel claiming that the disputed parcel had been in its possession since 1960 when the Socially Owned Enterprise was established.
15. On 13 September 2011, the Municipal Court (Judgment C. No. 241/2006) partially approved the Applicant's statement of claim, recognizing the Applicant's property right in a part of the disputed parcel and rejected the counterclaim of the Socially-owned Enterprise.
16. Against the Judgment of the Municipal Court (C. No. 241/2006), the appeals with the Special Chamber were filed by the Socially-owned Enterprise and the PAK. The social enterprise alleged "*violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law*", while the PAK challenged, *inter alia*, the competence of the Municipal Court to decide on the case.
17. On 8 December 2016, the Appellate Panel (Judgment AC.II-12-0006) partially approved the appeals of the Socially-owned Enterprise and the PAK by modifying the Judgment of the Municipal Court (C. No. 341/2006) and recognizing the right of ownership to the Applicant over only one part of the parcel which property right was recognized by the Municipal Court. The aforementioned judgment was final and non-appealable.
18. On 28 February 2017, the Applicant filed a revision against the Judgment of the Appellate Panel (Judgment AC-II-12-0006) with the Basic Court in Gjilan (hereinafter: the Basic Court) "*on the grounds of essential violations of the contested procedure provisions and violation of the substantive law*".
19. On 6 April 2017, the Applicant submitted a request for reconsideration of the Judgment of the Appellate Panel (Judgment AC-II-12-0006) to the Appellate Panel for the same reasons stated in the revision.
20. On 28 April 2017, the Basic Court (accompanying act C. No. 341/2006) forwarded the revision to the Supreme Court, whereas on 2 June 2017

(Accompanying act Rev. No. 123/2017), the Supreme Court of Kosovo forwarded the revision to the Special Chamber.

21. On 1 August 2017, the Appellate Panel (Decision AC-I-17-032) rejected as inadmissible the revision and the request for reconsideration of the procedure filed by the Applicant against the Judgment of the Appellate Panel (Judgment AC.II-12 -0006). The Appellate Panel, among others, reasoned that:

“The Appellate Panel considers that pursuant to Article 10 paragraph 14 of Law No. 04/L-033 on the Special Chamber [...] all judgments and decisions of the Appellate Panel are final and not subject to any further appeal. The LSC and its Annex do not provide any extraordinary remedy against such decisions or judgments of the Appellate Panel of SCSC.”

Applicant’s allegations

22. The Applicant alleges that the Appellate Panel (Judgment AC-II-12-0006 and Decision AC-17-0132) violated his rights guaranteed by Article 46 [Protection of Property] of the Constitution.
23. The Applicant specifies that *“usurpation of the private ownership was done without any legal or material ground but arbitrarily. Private ownership [is] inviolable and guaranteed by the Law, and that the right of property based on Article 46 of the Constitution of the Republic of Kosovo, was violated.”*
24. Finally, the Applicant requests the Court that *“due to essential violation of the contested procedure [...] non-determination of factual situation and erroneous application of the substantive law”* the Judgment of the Appellate Panel (AC-II-12 -0006) of 8 December 2016 be annulled and the case be remanded for retrial.

Admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“(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. In addition, the Court refers to Article 47 [Individual Requests] of the Law which establishes that:

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

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

“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 [...].”

29. The Court also takes into account Rule 36 (Admissibility Criteria), sub-rule (1) (b) and (c) of the Rules of Procedure, which provides:

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

[...]

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted;

c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...].”

30. The Court recalls that the four (4) month period starts from the “final decision” in the proceeding of exhaustion of legal remedies by which the Applicant’s request has been rejected (see, *mutatis mutandis*, case of ECtHR, *Paul and Audrey Edwards v. United Kingdom*, no. 46477/99, Decision of 14 March 2002).
31. The Court also recalls that the Applicant must exhaust remedies which are expected to be effective and sufficient. Only effective remedies can be taken into account by the Court as an applicant cannot extend the strict time-limit imposed under the Law and Rules of Procedure, by seeking to file legal remedies to the institutions which have no power or competence to offer effective redress for the complaint in issue (see, *mutatis mutandis*, the ECtHR case, *Fernie v. the United Kingdom*, No. 14881/04, Decision of 5 January 2006).
32. In this respect, the Court notes that the proceedings against the Applicant before the regular courts concerning the merits of his case had been completed by the Judgment of the Appellate Panel (AC.II-12-0006) of 8 December 2016.
33. In this connection, the Court refers to the Decision of the Appellate Panel (AC-I-17-032), which found that *“pursuant to Article 10, paragraph 14 of the Law No. 04/L-033 of the Special Chamber [...], all judgments and decisions of the Appellate Panel of the SCSC are final and are not subject to any other appeal.”*

34. The Court also refers to its case law where it has ascertained that: "*It is quite clear that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court*". (See Resolution in Case KIO2/15, Applicant *Social, Sports, Cultural and Economic Centre, "Pallati i Rinisë" Prishtina*, Resolution on Inadmissibility of 18 May 2015, paragraph 29).
35. The Court recalls that, in the Applicant's case, upon the receipt of the Judgment by the Appellate Panel (AC-II-12-0006) of 8 December 2016, nothing has prevented him from addressing the Constitutional Court. However, he has used legal remedies as a revision and a request for reconsideration of Judgment (No. AC-II-12-0006), which were not foreseen by law.
36. Therefore, as a "final decision" under Article 49 of the Law will normally be the Judgment of the Appellate Panel (AC-II-12-0006) of 8 December 2016, which modified the Judgment of the Municipal Court (C. No. 241/2006) and which was final and non-appealable (see, *mutatis mutandis*, *Paul and Audrey Edwards v. United Kingdom*, No. 46477/99, ECtHR, Decision of 14 March 2002).
37. In this regard, the Court recalls that the Judgment of the Appellate Panel (Judgment AC-II-12-0006) was rendered on 8 December 2016. Although the Applicant did not specify the date of receipt of the Judgment, from the facts of the case it is clear that the time between the receipt of the Judgment and the date of the submission of Referral on 10 October 2017 to the Constitutional Court, has passed the period of four (4) months.
38. Therefore, the Court concludes that the Applicant's Referral pertaining to the Judgment of the Appellate Panel (AC-II-12-0006) was filed after the legal deadline of four (4) months.
39. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also: Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).
40. Based on the reasons above, the Court finds that the Referral does not meet the procedural admissibility requirements established by Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such the Referral is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 36 (1) c) of the Rules of Procedure, in its session held on 7 December 2017, unanimously

DECIDES

- I. TO DECLARE the Referral 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


Arta Rama-Hajrizi