



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

Prishtina, on 8 December 2017
Ref. No.: RK 1168/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI33/17

Applicants

Jusuf Blea and others

**Constitutional review of Decision AC-I-16-0179 of the Appellate Panel of
the Special Chamber of the Supreme Court of the Republic of Kosovo on
Privatization Agency of Kosovo Related Matters,
of 13 October 2016**

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 to the Court through the mail service by Jusuf Blea, Nazim Blea, Arsim Shuki, Vjollca Bajraktari, Besnik Shuki, Fevzi Shilik, Tyrkan Berisha, Hajrid Shilik, Urhan Shilik, Gjylten Ihtimani, Shyret Pirana,

Shahdan Shilik, Nehari Iggji and Nazim Potori, all from Prizren and other heirs of the now-deceased Rasim B., former from Prizren Behar Shporta, Muhterem Muriq, Mudesir Mujo, Nersin Fusha, Hasar Fusha, Nesiman Shinik, Afrim Kula, Florija Geshmegji, FERIA Karajagdihi, Sevim Shehi, Izet Kovaqi, Orhan Kovaqi, Perihan Spahi, Erdohan Shilik and Erol Shilik, all from Prizren and heirs of now-deceased Hasan Bleta, former from Prizren, represented by Mas-har Pirana, a lawyer from Prizren (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge Decision AC-I-16-0179 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters, of 13 October 2016 (hereinafter: the Appellate Panel of the SCSC), which was served on the Applicant's representative on 21 October 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, whereby the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 10 March 2017, the Applicants submitted the Referral through post service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court)
6. On 13 March 2017, the Referral was registered with the Court under number KI33/17.
7. On 7 April 2017, 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 24 April 2017, the Court notified the Applicants about the registration of the Referral and requested additional documentation. On the same date, the Court sent a copy of the Referral to the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC).
9. On 8 May 2017, the Court received the requested additional documentation.

10. On 4 July 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

Summary of facts

11. On 18 July 2006, the Municipal Court in Prizren by Judgment C. No. 144/03 approved the claim of H. B, Y.B. and A.M. (all cousins and blood relatives to the Applicants) and declared them the owners of several cadastral parcels which were previously registered as the property of KBI "Progress" from Prizren.
12. On an unspecified date, the Applicants filed a claim with the Municipal Court in Prizren against H. B, Y. B. and A. M, claiming the right of ownership over 1/3 of the real part of that immovable property, alleging that they are also equal heirs of their predecessors and in an earlier court proceeding of 1996 all of them, as the heirs of their predecessors, together with the respondents became the owners in equal parts of another immovable property.
13. The Applicants claimed that the claim filed by their cousins H. B, Y. B. and A. M. without their inclusion was unlawful and based on false and incomplete documentation. This claim was reviewed in the Municipal Court with number C. No. 343/07.
14. On 4 July 2007, KBI "Progres" from Prizren made a proposal to the Municipal Court in Prizren and requested reopening of the procedure in case C. no. 144/03, completed with the final Judgment of 18 July 2006.
15. On 26 September 2007, the Municipal Court in Prizren, by Decision C. No. 470/07 allowed the repetition of the procedure and annulled the final Judgment C. No. 144/03 of 18 July 2006 and decided to reopen the procedure from the beginning, deciding that both claims, of the Applicants and of the respondents, are joined in a case, which was reviewed by the court with the number C. No. 470/07.
16. On 2 March 2011, the Municipal Court in Prizren, after the assessment of the claims, by Decision C. No. 470/07 was declared as incompetent and the case was referred to the Special Chamber of the SC for deciding.
17. On 3 June 2016, by Decision C-III-12-0683 of the Specialized Panel of the SCSC, the Applicants' claim was dismissed as inadmissible.
18. On 8 August 2016, against Decision C-III-12-0683, the Applicants filed appeal with the Appellate Panel of the SCSC.
19. On 13 October 2016, the Appellate Panel of the SCSC, by Decision AC-I-16-0179, rejected the Applicants' appeal as ungrounded and upheld Decision C-III-12-0683 of the Specialized Panel of the SCSC, of 30 June 2016.

Applicant's allegations

20. The Applicants allege that the challenged decision violated their right to fair and impartial trial, because the equality of arms was violated in such a way that the indisputable evidence certified by a notary stamp regarding the inheritance was not taken into account, and also some of the submissions of the Privatization Agency of Kosovo (PAK) submitted to the Specialized Panel of the SCSC and to the Appellate Panel of the SCSC were not served on the Applicants as parties to the proceedings.

Admissibility of Referral

21. 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 in the Rules of Procedure.
22. 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.”

23. In addition, the Court notes whether the Applicants filed appeal within the prescribed time limit, and in this case refer to Article 49 of the Law, which 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. 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.”

24. In order to verify whether the Applicants have submitted the Referral within the prescribed four 4 (four) month deadline, the Court refers to the date of receipt of the final decision by the Applicants and the date of submitting the Referral to the Constitutional Court.
25. The “final decision” for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicants’ claim (See *Paul and Audrey Edwards v. United Kingdom*, No. 46477/99, ECtHR, Decision of 14 March 2002).
26. The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of (See *Norkin v. Russia*, App. 21056/11, ECtHR, Decision of 5 February 2013 and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).

27. Regarding the appeal filed against Decision AC-I-16-0179, of 13 October 2016, the Court notes that the Applicants' representative, based on his own statement, received on 21 October 2016, whereas he submitted the Applicants' Referral addressed to the Constitutional Court through mail service on 10 March 2017, therefore, clearly after the expiry of the deadline foreseen by Article 49 of the Law, within which an individual referral can be filed with the Court.
28. The Court notes that the representative of the Applicants was aware of the expiration of the deadline, but he justified the delay with his health condition. The representative of the Applicants presented to the Court medical documentation justifying his health condition, requesting the Court to consider the Referral as timely.
29. Not wanting to challenge the data regarding the health condition of the Applicant's representative, the Court notes that it received the last decision regarding the case on 21 October 2016. However, based on its records of referrals submitted to the Court, results that the same lawyer in a capacity of an authorized representative of other applicants submitted on 24 November 2016 a referral to the Court and on 12 January 2017 additional documents (case KI136/16, Applicants T.J. and others), therefore, the Court cannot take into account the justification for expiration of the legal deadline.
30. The Court notes that the Applicants' representative was aware of the expiration of the deadline, but justified the delay with his health problems by submitting to the Court the medical documents justifying his health condition, and requested the Court to consider the referral as submitted in time.
31. Not wanting to challenge the data regarding the health condition of the Applicants' representative, the Court notes that the final decision in respect of the case was served on him on 21 October 2016, whereas according to his allegations, the health reasons prevented him from filing the Referral in time, however, the Court from its evidence of the referrals submitted to the Court, finds that the same lawyer in a capacity of the representative with the power of attorney filed a Referral with the Court for other applicants on 24 November 2016, and submitted additional documentation on 12 January 2017 (case KI136/16, Applicants *T.J. and others*), therefore, the Court cannot take into account the justification for the expiry of the legal deadline.
32. In addition, the Court notes that the Applicant authorized the aforementioned lawyer to represent him in the proceedings before the Constitutional Court and other courts. The Court considers that the procedural actions taken by the legal representative of the party, under the power of attorney, are considered to be the party's own actions. In this case, such actions also include the filing of requests and appeals and receipt of the court decisions (see case KI46/13, KI47/13, KI48/13 and KI68/13, Applicants *Naim Marina, Bukurije Drançolli*,

Audi Imeri and Genc Shala, the Constitutional Court, Resolution on Inadmissibility of 5 July 2013).

33. Based on the foregoing, the Court refers to the case law of the European Court of Human Rights, which concluded that “*a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes*” (See *Kamasinski v. Austria*, No. 9783/82, ECHR, Judgment of 19 December 1989, A. no. 168). In analogous fashion, the Court considers that public authorities cannot be held responsible for the actions of the lawyer, moreover, when the lawyer is authorized by the party itself, in this case the Applicant.
34. Therefore, in the circumstances of the present case, the Referral is out of time, and the Court cannot consider the allegations filed regarding the violations of the right to fair trial in all its elements (see, *inter alia*, Resolution on Inadmissibility of the Constitutional Court KI105/15, of the Applicants *Mehmet Bajraktari and others*, of 19 December 2016).
35. Based on the foregoing, it results that the Referral has not been submitted within the legal deadline stipulated by Article 49 of the Law, and it 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) (b) of the Rules of Procedure, on 4 July 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. This Decision is effective immediately.

Judge Rapporteur

Selvete Gërxhalli-Krasniqi



President of the Constitutional

Arta Rama-Hajrizi