



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

Prishtina, on 13 October 2017
Ref. No.: 1138/17

RESOLUTION ON INADMISSIBILITY

in

Case KI64/17

Applicant

Selatin Ahmeti

**Constitutional review of Conclusion No. 011-952-1/4261/16 of the
Directorate of Cadastre in the Municipality of Prishtina,
of 27 February 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 Selatin Ahmeti, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Conclusion No. 011-952-1/4261/16 of the Directorate of Cadastre in the Municipality of Prishtina (hereinafter: the Directorate of Cadastre) of 27 February 2017, which temporarily suspended the transfer of immovable property in the name of the Applicant.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 21 [General Principles], Article 46 [Protection of Property] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the 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 Court

5. On 1 June 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 June 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.
7. On 6 June 2017, the Court notified the Applicant about the registration of the Referral. On 19 June 2017, a copy of the Referral was sent to the Directorate of Cadastre.
8. On 5 September 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

9. On 27 December 2008, the Applicant purchased an apartment in Prishtina and certified the sale-purchase contract with the Municipal Court in Prishtina (Decision 86/2009 of 8 January 2009).
10. On an unspecified date, the apartment which the Applicant had leased as a business premise, was closed by the Municipal Inspectorate in Prishtina, for

the reason that the transfer of property was not carried out in the name of the Applicant.

11. On 16 December 2016, the Applicant submitted a request for transfer of the immovable property to the Directorate of Cadastre.
12. On 27 February 2017, the Directorate of Cadastre (Conclusion No. 011-952-1/4261/16) decided that until the submission of additional evidence by the Applicant, it would temporarily suspend the transfer of the immovable property.
13. The Directorate of Cadastre requested the following: *“[...] within the legal time limit of 15 working days from the date of receipt hereof, with the following documents: [...] based on Article 32, paragraph 1 and 2 of Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing, the completed bank transfer shall be presented as it is required based on this Law [...] between the seller and the buyer [...].”*
14. The Conclusion of the Directorate of Cadastre also determined that the Applicant *“is allowed to file appeal against this conclusion within a time limit of 15 days from the date of receipt. The appeal shall be addressed and submitted to the DOC [Directorate of Cadastre] for review.”*
15. On 13 March 2017, against the abovementioned conclusion, the Applicant filed a complaint with the Directorate of Cadastre.
16. Until this date, the Applicant did not submit the notification or decision regarding his complaint in the administrative procedure.

Applicant’s allegations

17. The Applicant alleges that his rights guaranteed by Article 21 [General Principles], Article 46 [Protection of Property] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution in conjunction with Article 6 [Right to a fair trial] of the ECHR have been violated.
18. Regarding the exhaustion of legal remedies, the Applicant alleges that *“[...] the failure to use or possess freely the property; the failure to administer the justice correctly, the extraordinary complexity of the administrative procedure for reaching a fair decision, the excessive delay of the process, namely not deciding upon the contest within a reasonable time even though it is known that the courts in the excessively extended process will decide in my favor, while the excessive extension of the legal process has unforeseen consequences.”*
19. Finally, the Applicant requests the Court: *“[...] to render a decision holding the violations of the rights of the Applicant guaranteed by the Constitution, that are related to Article 6 of the European Convention on Human Rights [...]”.*

Assessment of the admissibility of Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.

21. In this respect, the Court refers to 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.”

22. The Court also refers to paragraph 2 of Article 47 [Individual Requests] of the Law, which establishes:

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

23. The Court further refers to paragraph (1) (b) of Rule 36 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.

[...]”

24. The Court based on the case file, notes that the Applicant's complaint is still under the review with the Directorate of Cadastre.

25. Taking into account the fact that the Applicant's case is still under consideration in a regular administrative procedure with the Cadastral Directorate, the Court considers that the Applicant's Referral is premature.

26. In the present case, the Court recalls that the Applicant does not deny the fact that all available remedies have not been exhausted, but according to him, the exhaustion of effective legal remedies before the competent authorities, including the regular courts, is ineffective because it may result in the excessive length of the proceedings.

27. However, referring to its case law and the case law of the Court of Human Rights (hereinafter: the ECtHR), reiterates that that the length of proceedings, by itself, does not make legal remedy ineffective (See case of the Constitutional Court, KI145/15, *Florent Muçaj*, Resolution on Inadmissibility of 16 May 2016, paragraph 34).

28. Regarding the Applicant's allegation that in his case the legal remedies are ineffective, the Court notes that he does not provide concrete evidence substantiating his assumption.
29. Only the mere allegation of possible extensions of the proceedings in advance cannot serve as an argument to assess the effectiveness of legal remedies (see: case of the Constitutional Court, KI145/15, *Florent Muçaj*, Resolution on Inadmissibility of 16 May 2016, paragraph 35).
30. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (see: case of the Constitutional Court, KI07/09, Applicants: *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional Court, Resolution on of 19 May 2010).
31. Accordingly, the Court cannot assess the alleged constitutional violations without affording an opportunity to the competent authorities, namely the Directorate of Cadastre, to complete the proceedings regarding the Applicant's appeal that still are pending.
32. Finally, the Court finds that the Applicant's Referral is premature, because the Applicant has not exhausted all legal remedies as provided by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

In accordance with Article 113.7 of the Constitution, Article 47.2 of the Law Rule 36 (1) (b) of the Rules of Procedure, in the session held on 5 September 2017, unanimously

DECIDES

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

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi