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

Prishtina, on 11 April 2018
Ref. No.: RK 1214/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI81/17

Applicant

Rapsina Muslija

Constitutional review of Decision AA. No. 4436/2016 of the Court of Appeals of Kosovo of 22 December 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 by Rapsina Muslija from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision AA. No. 4436/2016 of the Court of Appeals of Kosovo of 22 December 2016, which rejected her appeal as ungrounded on the against Decision [P. No. 650/16] of the Basic Court in Prizren, which are in conjunction with Decision Rev. No. 78/2017 of the Supreme Court of Kosovo of 20 April 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which allegedly violated the Applicant's rights guaranteed by Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties] paragraphs 1 and 7 of the Constitution, Article 47 [Individuals Requests] 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 Constitutional Court

5. On 12 July 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 July 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu- Krasniqi.

7. On 9 October 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

8. On 22 February 2018, 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. The Applicant filed a claim with the Basic Court in Prizren for the annulment of the mortgage contract between the Applicant (claimant) and the respondents A.M. and Pro Credit Bank with seat in Prishtina.

10. The Applicant with a claim also made a proposal for the imposition of the interim measure to ban the legal transfer and the burden of the cadastral parcel, which is the subject of the dispute, and to suspend all executive actions in the executive procedure [I. No. 10/2016] until the completion of the contested proceedings.

11. On 12 June 2016, the Basic Court in Prizren by Decision [P. No. 650/16] approved a proposal to impose an interim measure. In the reasoning of this Decision, the Basic Court, *inter alia,* states:

> *"The Court, after analyzing and assessing the evidence in the case file, has come to the conclusion that the proposal of the respondent for determining the measure of security is currently based on the fact that there is a danger that without imposing the measure will evidently hinder the implementation of the request of the parties".*

12. Pro Credit Bank filed an objection against this decision, and the first instance court scheduled the hearing pursuant to Article 306 paragraph 2 of the Law on Contested Procedure (hereinafter: the LCP).

13. On 2 August 2016, the Basic Court in Prizren by Decision [P. No. 650/16] approved the objection and annulled the interim security measure imposed by Decision [P. No. 650/16] of the Basic Court in Prizren of 12 June 2016 and ordered the continuation of the contested procedure. In the reasoning of this Decision, the Basic Court, *inter alia,* states:

> *„the Court concluded that the circumstances for which the security measure was determined by this Court changed. This due to a fact that during the hearing the second-respondent ProCredit Bank presented evidence where it is proved that the claimant signed the contract on loan at second-respondent i.e. that the party gave consent to the first-respondent – her spouse to take a loan from the second-respondent".*

14. The Applicant filed appeal against the Decision of the Basic Court with the Court of Appeals.

15. On 22 December 2016, the Court of Appeals by Decision [AA. No. 4436/2016] rejected as ungrounded the Applicant's appeal and upheld Decision [P. No. 650/16] of the Basic Court in Prizren of 2 August 2016.

16. On 31 January 2017, the Applicant filed a revision with the Supreme Court of Kosovo against Decision [AA. No. 4436/2016] of the Court of Appeals.

17. On 20 April 2017, the Supreme Court by Decision [Rev. no. 78/2017] dismissed the Applicant's revision as inadmissible.

Applicant's allegations

18. The Applicant alleges that the decisions of the regular courts which suspended the interim security measure violated her rights guaranteed by Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

19. The Applicant basically challenges the manner in which the regular courts determined the factual situation when decided to suspend the interim security measure.

20. The Applicant claims that she did not sign a mortgage contract, which fact was not taken into account by the courts when they decided to suspend the interim security measure, which allegedly violated the right to co-ownership of 50% over the immovable property from the marital community.

21. Because of all the aforementioned, the Applicant considers that the decisions of the regular courts violate her rights guaranteed by Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

22. The Applicant further requests the Court the constitutional review of the *ABOVEMENTIONED ACTS* [Decision P. No. 650/16 of the Basic Court - Prizren, of 02.08 2016, Decision AA. No. 4436/2016 of the Court of Appeals-Prishtina of 22.12. 2016 and Decision CML. No. 78/2017 of the Supreme Court of Kosovo of 20.04. 2017, and to *"THE LATTER COMPLY WITH THE CONSTITUTIONAL PROVISIONS"*.

Admissibility of Referral

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

24. In this respect, the Court 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 on a legal manner by authorized parties.*
> *[...]*
>
> *7. Individuals are authorized to refer violations of public authorities of their individual rights and freedoms guaranteed by Constitution, but only after the exhaustion of all legal remedies provided by law.*

25. In this regard, the Court considers that the Applicant submitted the referral in a capacity as an authorized party after the exhaustion of all legal remedies.

26. However, the Court refers to Article 49 [Deadlines] of the Law, which stipulates:

> *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 [...].*

27. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure, which foresees:

> *The Court may consider a referral if:*
>
> *"[...]*

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

28. At the outset, the Court refers to the date of service of the final decision on the Applicant and the date on which the Referral was submitted, in order to assess whether the Applicant filed the Referral within the prescribed period of 4 (four) months.

29. In this respect, the Court notes that the Court of Appeals rendered decision on 22 December 2016, which was served on the Applicant on 10 January 2017; the Applicant submitted her Referral to the Court on 12 July 2017.

30. The Court recalls that the four-month period runs from the date of service of that final decision (See: *mutatis mutandis*,the ECtHR case *Paul and Audrey Edwards v. UK,* Application No. 46477/99, Judgment of 14 March 2002).

31. In that regard, the Court recalls that the Applicant's request for revision, submitted to the Supreme Court is not in accordance with Article 228 (1) of the Law on Contested Procedure, which provides:*„Revision are allowed against verdict of the court of second instance in which the appeal presented against the final verdict is dropped, respectively which verifies the verdict of the first instance on rejecting the revision presented against the final verdict".*

32. In fact, the Court notes that, in its reasoning, the Supreme Court stated, *inter alia*, that *„In the present case, it is about the security measure of the statement of claim, and that the dispute has not been completed on merits, and for these reasons and in accordance with the aforementioned legal provision, the revision is not allowed..."*

33. In this regard, the Court notes that by Decision [AA. No. 4436/2016] of the Court of Appeals of 22 December 2016, the proceedings before the regular courts concerning the Applicant's proposal for the imposition of the interim measure were terminated.

34. The Court considers that in these circumstances, the request for revision against Decision [AA. No. 4436/2016] of the Court of Appeals of 22 December 2016 was not an effective remedy and could not have been a legitimate expectation of the success of that remedy. In fact, the law explicitly provides that such a remedy is not allowed to be filed. See: case of the Constitutional Court KI135/16, Applicant: *Tomislav Janković and others*, Resolution on Inadmissibility of 27 October 2017, paragraph 25.

35. The Court reiterates that *"only remedies which are effective to be taken into account as an* applicant *cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue"* (See, *mutatis mutandis,* the European Court on Human Rights (hereinafter, the ECtHR) case *Fernie v. the United Kingdom,* Application No. 14881/04, Decision as to Admissibility, of 5 January 2006).

36. The Court recalls that after Decision. AA. No. 4436/2016 of the Court of Appeals of 22 December 2016 was served on the Applicant, nothing prevented the Applicant to address the Constitutional Court. However, she used a legal remedy that is not allowed by law.

37. In addition, the Court considers that the four-month period starts to run from the date of service of the final decision resulting from the exhaustion of legal remedies which are adequate and effective to provide redress in the respect of the matter being complained (See: ECtHR case *Norkin v. Russia,* Application No 20156/11, Decision as to Admissibility, of 5 February 2013; see also the Constitutional Court case KI201/13, *Applicant Sofa Gjonbalaj*, Resolution on Inadmissibility of 2 April 2014, § 32).

38. The Court recalls that *"if no remedies are available or if they are judged to be ineffective"*, the four-month' time-limit foreseen in Article 49 of the Law in principle runs from the date of service of the act complained of (See: ECtHR case *Bayram and Yildirim v. Turkey*, Application No. 38587/97, Decision of 29 January 2002).

39. The Court further recalls that the objective of the four month 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 the cases raising issues under the Constitution are dealt within a reasonable time and that the past decisions are not continually open to challenge (See: ECtHR case *O'Loughlin and others v. United Kingdom*, Application No. 23274/04, Decision as to Admissibility, of 25 August 2005).

40. Based on the foregoing, the Court considers that the final decision in the Applicant's Referral is the Decision AA. No. 4436/2016 of the Court of Appeals, of 22 December 2016. Thus, the time-limit begins from 10 January 2017, which is the date when the Applicant was served with aforementioned decision. The Applicant submitted her Referral on 12 July 2017. The four month period to file the Referral expired on 10 May 2017.

41. Therefore, the Court finds that the Referral is not submitted within legal deadline, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

42. In sum, the Court finds that the Applicant's Referral is inadmissible, because it was submitted out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 22 February 2018, 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; and

IV. This Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi