



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

Prishtina, on 21 December 2018
Ref. no.:RK1307/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI27/18

Applicant

Sinan Thaqi and Hasan Thaqi

**Constitutional review of Decision Rev. No. 76/2017 of the Supreme Court
of Kosovo of 3 May 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Sinan Thaqi and Hasan Thaqi (hereinafter: the Applicants), from village Mirusha, Municipality of Malisheva, represented by Mentor Neziri, a lawyer from Prishtina.

Challenged decisions

2. The Applicants challenge the constitutionality of Decision Rev. No. 76/2017 of the Supreme Court of Kosovo of 3 May 2017, in conjunction with Decision CA. No. 4332/2015 of the Court of Appeals of 14 February 2017 and Judgment C. 82/2009 of the Basic Court in Gjakova, of 28 September 2015.
3. The challenged decision of the Supreme Court was served on the Applicants on 29 June 2017.

Subject matter

4. The subject matter is the constitutional review of the aforementioned decisions of the regular courts. The Applicants do not refer to any constitutional provision in particular, but from the content of the Referral it results that they allege a violation of Articles 31 [Right to Fair and Impartial Trial] and 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 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
6. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

7. On 23 February 2018, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 26 February 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 4 May 2018, the Court notified the Applicants about the registration of the Referral and requested them to complete the Referral and to submit evidence (acknowledgment of receipt), indicating the date of receipt of the challenged decision. On the same date, a copy of the Referral was sent to the Supreme Court and the Basic Court in Gjakova.

10. On 18 May 2018, the Basic Court in Gjakova submitted the receipt (acknowledgment of receipt) indicating that the challenged decision of the Supreme Court was served on the Applicants on 29 June 2017.
11. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues was terminated. On 26 June 2018, the mandate of judges: Altay Suroy and Ivan Čukalović was terminated.
12. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
13. On 19 September 2018, the President of the Court appointed the new Review Panel composed of Judges: Bekim Sejdiu and Radomir Laban.
14. On 22 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 23 June 2009, the Applicants filed a lawsuit with the former Municipal Court in Malisheva against the third parties regarding the confirmation of the property right over the immovable property based on the sale-purchase.
16. On 28 September 2015, the Basic Court in Gjakova – Branch in Malisheva (Judgment C. No. 82/2009) rejected as ungrounded the statement of claim of the Applicants for the confirmation of the property right based on the sale-purchase of some cadastral parcels located in the Cadastral Zone in Malisheva. The Basic Court reasoned that the Applicants did not prove to be the owners of the disputed parcels because there was no sale-purchase contract in writing certified by the competent authority and, in addition, the opposing party had always objected to the existence of a sale-purchase contract for the disputed parcels.
17. Meanwhile, the Applicants filed an appeal with the Court of Appeals alleging essential violations of the procedural provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law. The Applicants also proposed that the challenged Judgment be modified, the statement of claim of the opposing party be rejected as ungrounded or that the challenged judgment be annulled and the case be remanded for retrial. The Applicants basically claimed that based on the acquisition by prescription (conscientious possession of an object for a certain time by law), they were the conscious owners of the disputed parcels.
18. On 14 February 2017, the Court of Appeals (Decision CA No. 4323/2015) rejected the Applicants' appeal as ungrounded and upheld the challenged Judgment of the Basic Court. The Court of Appeals reasoned that the verbal sale-purchase contract does not meet any legal requirement which would confirm its validity. In addition, the Applicants did not provide any evidence of

conscientious possession of the disputed parcels to be considered as the owners based on the “acquisition by prescription”.

19. Therefore, the Applicants filed a request for revision against the abovementioned decisions with the Supreme Court, alleging essential violation of the procedural provisions and erroneous application of the substantive law. The Applicants also proposed that the challenged decisions be annulled and the case be remanded for retrial and to confirm their property right over the contested cadastral parcels.
20. On 3 May 2017, the Supreme Court (Decision Rev. No. 76/2017) dismissed as inadmissible the request for revision of the Applicants submitted against the decisions of the lower instance courts. The Supreme Court reasoned that the request for revision was inadmissible because the value of the object of dispute did not exceed the amount of € 3,000 foreseen in Article 211 of the Law on Contested Procedure. In addition, the Applicants did not request, until the conclusion of the preparatory hearing held in the Basic Court, the change of the value of the object of the dispute, as provided by Article 36 of the Law on Contested Procedure.

Applicant’s allegations

21. The Applicants allege that the decisions of the regular courts have violated their rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution.
22. The Applicants request the Court to render Judgment: *“...by which it will approve the claimant’s statement of claim as grounded and admissible, and the judgment and the decision challenged by this referral will be considered as decisions that have violated the constitutionality and legality to the detriment of the Applicants”*.

Admissibility of the Referral

23. The Court first will examine whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, provided for in the Law and as further specified in 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 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”.

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

Article 49

“The referral should be submitted within period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision”.

26. The Court further takes into account Rule 39 (1) (c) of the Rules of Procedure which specifies:

“(1) 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”.

27. The Court notes that the Applicants’ central allegations revolve around their right to a fair trial and protection of property because the decisions of the regular courts *“violated the constitutionality and legality to the detriment of the Applicants”*.
28. The Court notes that the Applicants must meet all procedural requirements before having their allegations on a fair trial and protection of property considered by this Court.
29. In the case at issue, the Court notes that the Referral was submitted on 23 February 2018, whereas the challenged judgment of the Supreme Court was served upon the Applicants on 29 June 2017. It follows, that the referral was submitted beyond the deadline provided for by Article 49 of the Law.
30. From the above, the Court notes that it cannot consider the allegations of a fair trial and protection of property submitted by the Applicants, because the 4 (four) month deadline provided for by Article 49 of the Law has not been met.
31. The Court recalls that the purpose of the 4 (four) month deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenge. (see: case of *O’ Loughlin and Others v. the United Kingdom* No. 23274/04, ECtHR Decision of 25 August 2005 and *mutatis mutandis*, see: case of the Constitutional Court No. KI140/13, Applicant: *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).
32. The procedural rules and the time-limits for appeals are designed to ensure the proper administration of justice and, in particular, legal certainty. Litigants should normally expect those rules to be applied. (See, for example: *Belesh and others v. the Czech Republic*, ECtHR, application no. 47273/99, Judgment of 12 November 2002, paragraph 60 and the references cited therein).

33. In addition, the Court considers that it is the duty of the Applicants or of their representatives to act with *'due diligence'* to ensure that their claims for protection of rights and fundamental freedoms are filed within the deadline of four (4) months provided for in Article 49 of the Law and further specified in Rule 39 (1) (c) of the Rules of Procedure. (See: Constitutional Court of the Republic of Kosovo: case No. KI07/15, Applicant: *Shefki Zogiani*, Resolution on Inadmissibility, of 8 December 2016, paragraph 52 and the references cited therein and see *mutadis mutandis Mocanu and Others v. Romania*, [GC], complaint no. 10865/09, 45886/07 and 32431/08, Judgment of 17 September 2014, paras 263-267; also see *Ölmez v. Turkey*, Decision).
34. Based on the foregoing considerations, the Referral, on constitutional basis, is out of time and is to be declared inadmissible as established by Article 113.7 of the Constitution, provided for by Article 49 of the Law and as further specified by Rule 39 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and in accordance with Rule 39 (1) (c) and 59 (2) of the Rules of Procedure, on 22 November 2018, unanimously

DECIDES

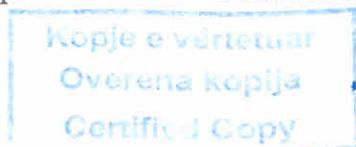
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.