



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

Prishtina, on 03 October 2019
Ref. no.:RK 1436/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI46/19

Applicant

Naser Husaj

**Constitutional review of the Decision Rev. no. 363/18 of the Supreme
Court, of 13 November 2018**

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, gjyqtar

Applicant

1. The Referral was submitted by Naser Husaj, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision Rev. nr. 363/18 of the Supreme Court of Kosovo, of 13 November 2018.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, by which the Applicant alleges to have been violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 18 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 March 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gerxhaliu-Krasniqi and Bajram Ljatifi (members).
7. On 8 April 2019, the Court notified the Applicant about the registration of Referral KI46/19 and forwarded a copy thereof to the Supreme Court, in accordance with the law.
8. On 4 September 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant is submitting a Referral to the Court for the third time, the first Referral KI22/16, the second Referral KI128/17 and the current Referral KI46/19, are different as to the subject matter, hence the Court does not find it necessary to repeat the facts of previous Referrals KI22/16 and KI128/17.
10. On 22 December 2014, the Applicant filed a statement of claim for confirmation of ownership of the parcels no. 85/1, 80/1, 80/2, 87/1 and 89, in a total surface of 4,43.72 hectares, registered in the possession list no. 313 CZ Vitimirica, according to the contract on sale.

11. On 29 May 2014, the Basic Court in Peja, by Judgment C. no. 1127/2017, rejected as ungrounded the statement of claim of the Applicant whereby he had claimed the ownership over the aforementioned parcels, according to the contract on sale, on the ground that the Applicant did not provide original evidence for the purchase of the parcels and that they were purchased by the witnesses, for the time the Applicant has been the authorized person of the Respondent V.P. to sell the land of the Respondent.
12. On 3 July 2014, the Applicant submitted an appeal to the Court of Appeals on the ground of alleged violations of contested procedure, erroneous determination of factual situation and erroneous application of substantive law.
13. On 17 July 2018, the Court of Appeals, by Judgment Ac. no. 3441/2017 rejected as unfounded the Applicant's appeal and upheld the Judgment of the first instance court C. no. 1127/2017, of 29 May 2014, with the following reasoning: *"This court finds that the claimant's appeal claims are unfounded, since the first instance court did not make substantial violations the provisions of the contested procedure nor did it erroneously apply the substantive law for which this court takes care ex officio, since the first instance court has in a correct and full manner determined the factual situation, as set out above in the reasoning of this judgment."*
14. On 10 September 2018, the Applicant submitted a request for revision to the Supreme Court, due to substantial violations of the provisions of the contested procedure and erroneous application of substantive law, with the proposal that the two lower instance court judgments to be amended and the case be remanded for a trial based on the merits.
15. On 13 November 2018, the Supreme Court, by Decision Rev. no. 363/2018, rejected as inadmissible the request for revision filed by the Applicant against Judgment Ac. no. 3441/2017 of 17 July 2018, because the legal remedy exercised by the Applicant was not permitted under Article 211.2 of the Law on Contested Procedure.

Applicant's allegations

16. The Applicant alleges that the challenged decision of the Supreme Court has violated his rights guaranteed by Articles 31, 46 and 54 of the Constitution, because the aforementioned parcels, he claims, to have acquired on the basis of the contract on sale.
17. The Applicant requests from the Court to quash all the decisions of the regular courts and to remand the case for retrial and decide on, based on its merits.

Admissibility of the Referral

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and provided for in the Rules of Procedure.

19. In this regard, the Court initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

“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.”

20. Further, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 48
[Accuracy of the Referral]

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.

Article 49
[Deadlines]

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. [...].”

21. As to the fulfillment of these criteria, the Court considers that the Applicant is an authorized party, challenging an act of a public authority, namely the Decision Rev. no. 363/18 of the Supreme Court, of 13 November 2018; he has specified his rights and freedoms which he alleges to have been violated; he has exhausted all legal remedies provided by law and has submitted the Referral within the stipulated legal deadline.
22. However, in addition to these criteria, the Court must also examine whether the Applicant has fulfilled the admissibility requirements laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) provides that:
- “(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*
23. In this respect, the Court recalls that the Applicant alleges that the Supreme Court, by the challenged Decision, has violated his rights guaranteed by Articles 31, 46 and 54 of the Constitution, because the contract on the sale of the disputed parcels was disregarded.

24. The Court notes that the Applicant expressly mentions the alleged violations of the rights guaranteed by the Constitution by linking the alleged violations to the determination of the facts, namely to the disregard of the sale contract on the disputed parcels, by failing to further elaborate on a constitutional basis, for how and why did there result the violation of these specific articles of the Constitution.
25. As regard the foregoing allegations, the Court considers that the Applicant has built his case on the grounds of legality, namely, on the determination of the facts. The Court recalls that these allegations relate to the field of legality and as such do not fall under the jurisdiction of the Court, and therefore cannot, in principle, be examined by the Court (see, the Constitutional Court case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35).
26. In this respect, the Court notes that it is not its duty to deal with the errors of law allegedly committed by the regular courts (legality), unless and to the extent that such errors might have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would act as a court of the “*fourth instance*”, which would result in exceeding the limits of its established jurisdiction. In line with the ECtHR case law and also with its already consolidated case law, the Court reiterates that it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law and that no abstract assessments can be made as to why a regular court has ruled in one way rather than another (see, the case *García Ruiz v. Spain*, ECtHR No. 30544/96, of 21 January 1999, para. 28 and see also the case: KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
27. The Constitutional Court can only examine whether in a proceeding the evidence was presented in a correct manner and whether the proceedings in general, viewed in their entirety, were conducted in such a way that the Applicant had a fair trial (see, among other authorities, *Edwards v. United Kingdom*, No. 13071/87, European Commission Report on Human Rights, adopted on 10 July 1991).
28. Based on the case file, the Court notes that the reasoning provided in the Decision of the Supreme Court is clear and after reviewing all the proceedings, the Court also found that the proceedings before the Court of Appeals and the Basic Court have not been unfair or arbitrary (see the case *Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).
29. In the circumstances of the present case in order to elaborate even more specifically the general principles of constitutional adjudication, the Court notes that the Supreme Court had rejected the Applicant's request as “inadmissible” - in procedural aspect and without examining the merits of the request. The Supreme Court, by interpreting the provisions of the Law on Contested Procedure as it has deemed to be the fairest way to interpret them, stated that the request for revision should be declared inadmissible as the value of the dispute was below € 3,000. Thus, the Supreme Court, on procedural grounds of admissibility, rejected the Applicant's request.

30. More precisely, the Supreme Court in its Decision had stated as follows: *“According to the provision of Article 211.2 of the LCP, revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items of fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed € 3,000. The value of the object of dispute in this legal matter is 1.000,00 €, which is below the limit provided by law.”*
31. In this regard, the Court further considers that the Applicant did not substantiate that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his constitutionally protected rights and freedoms have been violated as a result of the erroneous interpretation of the procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality (see, the case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44 and see also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).
32. The case-law of this Court indicates that there were other cases where a Decision of Supreme Court was challenged - such as the present one - rejecting as inadmissible the requests for revision in which the value of the dispute was below € 3,000. In such cases, the Court, as in the present case, focused only on whether the Applicants have benefited from fair and impartial trial by not elaborating on the issues of legality and aspects of the interpretation of procedural and substantive law since such prerogatives are the competence of the regular courts. Therefore, the Court has declared such cases inadmissible and manifestly ill-founded (see the cases of the Constitutional Court, KI66/18 Applicant *Sahit Mucolli*, Resolution of 6 December 2018, KI110/16 Applicant *Nebojša Đokić*, Resolution of 24 March 2017, KI24/16 Applicant *Audi Haziri*, Resolution of 4 November 2016, KI112/14 Applicant *Srboljub Krstić*, Resolution of 19 January 2015, KI84/13 Applicants *Gani, Ahmet and Nazmije Sopaj*, Resolution of 18 November 2013).
33. In line with its consolidated case law, the Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts, namely with the decisions of the Supreme Court, the Court of Appeals and the Basic Court cannot in itself raise an arguable claim of violation of the right to fair and impartial trial (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).
34. As a result, the Court considers that the Applicant has not substantiated the allegations that the respective proceedings were in any way unfair or arbitrary, and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR.

35. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and therefore inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 4 September 2019, unanimously

DECIDES

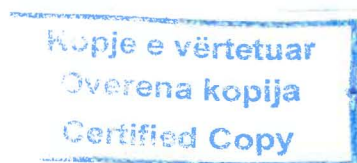
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Arta Rama-Hajrizi



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