



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

Prishtina, on 4 November 2016
Ref. No.: RK94/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI24/16

Applicant

Avdi Haziri

**Constitutional review of Decision Rev. no. 191/2015 of the Supreme Court
of Kosovo, of 1 September 2015**

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Avdi Haziri (hereinafter: the Applicant) from Gjilan, represented by Basri Jupolli, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision Rev. no. 191/2015, of the Supreme Court, of 1 September 2015, in conjunction with Decision Ca. no. 4315/2012 of the Court of Appeal, of 6 February 2015, Judgment C. no. 681/11 of the Municipal Court in Gjilan, of 4 September 2012, Decision AC. no. 148/11 of the District Court in Gjilan, of 21 September 2011, and Judgment C. no. 232/2004 of the Municipal Court in Gjilan, of 18 March 2011.
3. The Decision of the Supreme Court was served on the Applicant on 16 October 2015.

Subject Matter

4. The subject matter is the constitutional review of Decision Rev. no. 191/2015 of 1 September 2015, of the Supreme Court, with an allegation that the Applicant's right to property, as guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), was violated.
5. The Applicant, in substance also raises the allegation of a violation of the right to fair and impartial trial, but without reference to any constitutional provision in particular.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo, 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

7. On 4 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 14 March 2016, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
9. On 27 April 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court and the Court of Appeal.
10. On 29 April 2016, the Court requested the Applicant and the Basic Court in Gjilan to submit evidence (a copy of the letter of the receipt), indicating the date when the challenged decision of the Supreme Court was served to the Applicant.

11. On 12 May 2016, the Court received evidence (a copy of the letter of the receipt), showing that the decision of the Supreme Court was served to the Applicant on 16 October 2015.
12. On 15 September 2016, 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

13. The documents included in the Referral show that in 1984, the Applicant's brothers sold an immovable property to a third party A.J. After a long period of time, at least after 20 years, the Applicant challenged the ownership title of A.J. over the immovable property in question.
14. On 25 April 2004, A.J. filed a claim with the Municipal Court in Gjilan for confirmation of the ownership title over the immovable property challenged by the Applicant. The amount of the subject of dispute in the claim of A.J. was set in the amount of 250 euro. This amount was approved by the regular courts and the Applicant did not challenge this amount in any of the regular judicial instances.
15. On 18 March 2011, the Municipal Court in Gjilan, by Judgment C. no. 232/2004, approved the statement of claim of A.J. as grounded. The Municipal Court, *inter alia*, argued that in 1984, the Applicant's brothers sold the immovable property to A.J.; that the challenged immovable property was possessed in good faith by A.J. for 20 years without being obstructed by anyone; and consequently, in accordance with the applicable law in Kosovo, A.J. had acquired the ownership title over the challenged property.
16. On 13 April 2011, the Applicant filed an appeal with the District Court in Gjilan, by alleging violation of the procedural provisions, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.
17. On 21 September 2011, the District Court in Gjilan by Decision AC. no. 148/11 approved the Applicant's appeal, quashed the Judgment of the Municipal Court, and remanded the case for retrial.
18. On 4 September 2012, the Municipal Court by Judgment C. no. 681/11 approved again the statement of claim of A.J. and confirmed that A.J. is the owner of the challenged immovable property based on the sale purchase and adverse possession.
19. On 9 October 2012, the Applicant filed appeal with the District Court on the grounds of violations of the procedural law, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.

20. On 6 February 2015, the Court of Appeal by Decision CA. no. 4315/2012 rejected the appeal of the Applicant as ungrounded and upheld the Judgment of the Municipal Court. The Court of Appeal adopted the reasoning of the Municipal Court, adding that its conclusions are fair.
21. On 7 April 2015, the Applicant filed a request for revision with the Supreme Court due to substantial violation of the procedural law and erroneous application of the substantive law.
22. On 1 September 2015, the Supreme Court by Decision Rev. no. 191/2015 rejected as inadmissible the Applicant's revision filed against the decision of the Court of Appeal. The Supreme Court reasoned that the request for revision filed by the Applicant was inadmissible because the value of the subject of the dispute does not exceed the amount of 3,000 euro as provided by Article 211.3 of the Law on the Contested Procedure. The Supreme Court further added that at the time when the claimant A.J. filed a claim with the Municipal Court in Gjilan, he stated the value of the dispute as being 250 euro.

Applicant's allegations

23. The Applicant alleges that in his case the right to property guaranteed by Article 46 [Protection of Property] of the Constitution was violated.
24. As it pertains to the proceedings conducted before the regular courts, the Applicant alleges: (i) that the sale-purchase of the challenged property was not carried out by the owner, because the Applicant and his brothers had not completed the division of inheritance; (ii) that the payment of the sale-purchase has never been confirmed; and (iii) it is not logical that the value of this property dispute, was justified by the regular courts in the amount of 250 euro.
25. In this respect, as it pertains to the first allegation, the Applicant emphasizes: *"...In all the court decisions the error in decision making consists of disregarding the decisive evidence that the sale took place with the non-owner, because the non-owner has never become an owner neither by inheritance nor in another manner... The courts have not correctly and objectively determined the factual situation related to the payment of the purchase price, because there were no pieces of material evidence in the case file regarding the payment made and such payments have remained non-clarified and have been challenged by the inheritors."*
26. As it pertains to the second allegation, the Applicant emphasizes that: *"...The courts have not correctly and objectively determined the factual situation related to the payment of the purchase price, because there were no pieces of material evidence in the case file regarding the payment made and such payments have remained non-clarified and have been challenged by the inheritors."*
27. As it pertains to the Applicant's third allegation, the Applicant requests: *"...The Defense also emphasizes that all the Court has legitimated the value of the contest mentioned in the text of the initial claim in the amount of 250 Euros,*

while the proceedings for the contest were conducted for an amount exceeding 200.000,00 DM.”

Admissibility of the Referral

28. The Court first examines whether the Applicant has met all the admissibility requirements, laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

29. In this respect, the Court refers to Article 113 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.”

30. The Court also refers to Article 48 of the Law, which provides:

“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.”

31. The Court further takes into account Rule 36 1 (d) and (2) (d) of the Rules of Procedure that specify:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim.”

32. The Court notes that the main issue in this case is the ownership title and confirmation of ownership over the disputed property, where the decisions of the regular courts show that A.J. has acquired the ownership title on the basis of sale, possession in good faith and unobstructed use of the challenged property for more than 20 years in accordance with Article 28 of the Law on Basic Legal-Property Relations, as reasoned in a detailed manner by the regular courts.

33. The Court notes that the Applicant is dissatisfied with the decisions of the regular courts as it pertains to: (i) not taking into account the crucial evidence that the sale-purchase occurred with the person who is not the owner; (ii) the factual situation is not correctly and objectively determined with regard to the purchase price; and (iii) that all courts have justified the amount of certain dispute in the text of the original lawsuit in the amount of € 250. As a result, the Applicant alleges that his right to property as guaranteed by Article 46 [Protection of Property] of the Constitution was violated.
34. Regarding the first and the second Applicant's allegation, namely, the illegality of sale of challenged immovable property and the sale price, the Court notes that the regular courts have given sufficient reasons explaining the legal and factual basis of the acquisition of the ownership title by A.J., by paying the purchase price and exercising over 20 years the possession in good faith, without being obstructed or challenged by anyone, as stipulated in the Law on Basic Legal-Property Relations, which was repeatedly referred to by the regular courts.
35. The Court of Appeal in its reasoning, *inter alia*, stated:
- “Taking into account the indisputable fact that the claimant had the immovable property in question in possession for more than 20 years, in the possession of which he entered based on the verbal sale-purchase contract and the payment of the purchase price, and that his possession was not obstructed by the respondents, this Court found that the Claimant is the conscientious holder of the challenged immovable property. This possession is lawful because it was based on the verbal contract, since none of the respondents challenged before the first instance court that it was acquired by force, fraud or misuse of trust.*
36. Regarding the third allegation of the Applicant, namely the value of the dispute, the Court notes that the Applicant did not challenge the amount in dispute before any of the regular court instances. In the claims and in responses to claims, he stated himself the amount that he now challenges. There is nothing in the Referral that indicates that the issue was raised by the Applicant during the proceedings before the regular courts, nor in the request for revision before the Supreme Court, which rejected as inadmissible the revision on the basis of the value of dispute, as defined by the Law on Contested Procedure.
37. The relevant part of the Decision of the Supreme Court reads:
- “...at the time when the claimant filed the claim with the Municipal Court in Gjilan, on 25 May 2004, mentioning the contest value of 250 Euros. Taking into account that the judgments of the lower instance courts were rendered at the time when the Law no. 03/L-006 on the Contested Procedure, of 30 June 2008, was published in the Official Gazette no. 38/2008 on 20 September 2008, and entered into force on 05 October 2008, and even by the provision of Article 211.3 of the LCP, the revision is not admissible in legal-property contests wherein the statement of claim is*

not related to monetary claims, handing over of items, or fulfillment of any other promise, in case the contest value mentioned in the claimant's claim does not exceed the amount of 3,000 Euros. Due to the fact that the value of the contest object shown in the claimant's statement of claim is 250 Euros and does not exceed the amount provided by the provision of Article 211.3 of the LCP, the revision in this legal matter is inadmissible and, as such, is to be rejected."

38. In fact, this allegation was raised for the first time before the Constitutional Court. The Constitutional Court, in accordance with the principle of subsidiarity cannot review this issue without previously being raised and assessed in the regular court proceedings.
39. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right. Thus, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. (See: *Resolution in case KI139/12, Besnik Asllani, Constitutional review of Judgment PKL. no. 111/2012 of the Supreme Court, of 30 November 2012, paragraph 45; Resolution, in Case No. Kl. 07/09, Demë KURBOGAJ and Besnik KURBOGAJ, Constitutional review of Judgment Pkl. no. 61/07, of the Supreme Court of 24 November 2008, paragraph 18; Decision in case no. KI89/15, Fatmir Koci, Constitutional review of Judgment PAKR. nr. 473/2014, of the Court of Appeal, of 21 November 2014, paragraph 35; and see mutandis mutandis Selmouni v. France [GC], § 74; Kudla v. Poland [GC], § 152; Andrasik and Others v. Slovakia (dec).*)
40. In addition, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
41. The Constitutional Court recalls that it is not a fact-finding Court and that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, while the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a fourth instance court (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
42. The Applicant's Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the regular courts' proceedings in general have been conducted in such a way that

the Applicant had a fair trial (see: case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

43. The fact that the Applicant is dissatisfied with the outcome of the proceedings cannot of itself raise an arguable claim for breach of Article 46 [Protection of Property] of the Constitution (see: case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, Judgment of 26 July 2005).
44. In these circumstances, the Court considers that the Applicant has not substantiated, nor has he sufficiently justified his claim of violation of human rights and fundamental freedoms guaranteed by the Constitution, in particular, violation of Article 46 [Protection of Property] of the Constitution, because the facts presented by him do not show in any way that the regular courts denied him the rights guaranteed by the Constitution.
45. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible, as established by Article 113.7 of the Constitution, provided by Article 48 of the Law and specified by the admissibility criteria, Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36(1) (d) and (2) (d) of the Rules of Procedure, on 15 September 2016, 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Gresa Caka-Nimani
Gresa Caka-Nimani



President of the Constitutional Court

Arta Rama-Hajrizi
Arta Rama-Hajrizi