



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

Prishtina, on 28 May 2018
Ref. No.: RK 1235/18

RESOLUTION ON INAMDISSIBILITY

in

Case No. KI143/17

Applicant

Nybyvet Bytyqi and others

**Constitutional review of Judgment Ac.nr.2926/13 of the Court of Appeals
of Kosovo of 20 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.

Applicants

1. The Referral is submitted by Nybyvet Bytyqi, Imran Bytyqi, Ilijaz Bytyqi, Nadir Bytyqi and Hajret Bytyqi from Prizren (hereinafter: the Applicants), represented by Myrvete Çollaku, attorney-at-law practicing in Prizren.

Challenged decisions

2. The Applicants challenge Judgment of the Court of Appeals Ac.nr.2926/13 of 20 February 2017, which was served upon them on 5 June 2017.

Subject matter

3. The subject matter is the constitutional review of challenged Judgment of the Court of Appeals Ac.nr. 2926/13 of 20 February 2017.
4. The Applicants allege violation of Articles 5 (2) [Languages] 46 [Protection of Property] of the Constitution of the Republic of Kosovo in connection with Article 1 of Protocol No. 1 of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 and 48 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rules 29 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 2 December 2017, the Applicants submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 8 December 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Arta Rama - Hajrizi and Gresa Caka-Nimani.
8. On 22 December 2017, the Court notified the Applicants about the registration of the Referral and asked them, in accordance with Article 21 of the Law and Rule 29 of the Rules of Procedure, to complete their referral.
9. On 16 January 2018, the Applicants submitted a document of twenty-two (22) pages with the Court. That document contained the challenged judgment of the Court of Appeals, certified power of attorney for their representative and copies of their identity cards. No evidence was submitted with respect to their allegations raised in their referral with the Court.
10. On 7 February 2018, a copy of the referral was sent to the Court of Appeals and the Basic Court in Prizren. The Applicants and the Basic Court in Prizren were asked to submit evidence (receipt) which indicates the date when Applicants received the challenged judgment of the Court of Appeals.
11. On 20 February 2018, the representative of the Applicants submitted the receipt evidencing that the challenged judgment of the Court of Appeals was served upon them on 5 June 2017.

12. On 20 April 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

13. From the content of the referral it transpires that on 1 June 2009, the Applicants as legal heirs of KB and MB lodged a lawsuit with the then Municipal Court in Prizren. The Applicants requested that the deed of gift made between NB as the donor on the one hand, and the Municipality of Prizren, as donee on the other, and legalized in the Municipal Court in Prizren (Leg. No. 1534/60 of 12 December 1960), be declared null and void. The Applicants also requested that the Municipality of Prizren be obligated to handover to them-as heirs to legal predecessors- the cadastral plots in dispute and to permit them to register as co-owners of the disputed property at the Cadaster and Geodesy Directorate in the municipality of Prizren.
14. On 10 July 2013, the Basic Court in Prizren (Judgment C. no. 394/07), rejected the Applicants' lawsuit mentioned in the above-stated paragraph.
15. The Applicants challenged that judgment before the Court of Appeals alleging essential violation of procedural law, erroneous and incomplete assessment of the factual situation as well as erroneous application of the substantive law. The Applicants proposed modification of the impugned judgment and acceptance as a whole of their lawsuit or setting aside that judgment and remand the case for fresh consideration.
16. On 20 February 2017, the Court of Appeals (Judgment Ac. No. 2926/13) rejected as ill-founded the appeal of the Applicants and upheld the impugned judgment of the Basic Court. The Court of Appeals found that the impugned judgment was not marred by essential violations and that the substantive law has been applied correctly, which the Court of Appeals by virtue of law is bound to check ex-officio. The Court of Appeals added that in accordance with the Law on Obligational Relations, the Applicants were entitled to challenge the so-called contracts of 'relative nullity' within one year from their conclusion in one instance (subjective deadline), and within three years in all instances (objective deadline), following which, that legal deadline expires and is no longer open to challenge because it is of a 'preclusive nature'. The Court of Appeals asserted that in the concrete case, the Applicants had lodged their lawsuit forty-seven (47) years after legal deadlines because the challenged contract was drawn up and entered into force on 27 December 1960, whereas the lawsuit of the Applicants was lodged on 1 June 2009.

Applicant's allegations

17. The Applicants allege violation of Article 46 [Protection of Property] of the Constitution in connection with Article 1 of Protocol No. 1 (Protection of property) of the ECHR.
18. The Applicants, in substance, also allege violation of Article 5 [Languages] of the Constitution, due to them not being given the opportunity by the courts of

general jurisdiction to follow proceedings in Turkish, which is their native language.

19. In respect of property, the Applicants allege that: *"...by Decision C. no. 394/2007, of 10 July 2013, the Court rejected the statement of claim of the claimants who requested to confirm that contract Leg. No. 1534/60, on allocation of the immovable property entered into between the uncle of the claimants, who signed the allocation contract even for the part of his nephews and nieces, of 12 December 1960, at the Municipal Court in Prizren...This Judgment becomes final by Judgment Ac. 2926/13, of the Court of Appeals, of 20 February 2017, whereby the appeal of the authorized representative of the claimants is rejected"*.
20. In that respect, the Applicants further allege that: *"The facts that have been submitted under item 3 represent violations of the Constitution of the Republic of Kosovo, by denying the right of the parties to judicial protection regarding the securement of the right to property as constitutional category...the Constitution of the Republic of Kosovo which defines the property as sacred and it regulated the right to property for everyone equally by a type of standard, when the annulment of contracts is stipulated for others, why those contracts do not have the character of absolute nullity for these parties"*.
21. In respect to the right to use their native language, the Applicants allege and expect from the Court: *"...to allow parties of Turkish nationality to proceed and submit letters in their native language...to ensure a type of standard for annulling the contracts as others that have been considered to have absolute character..."*.

Assessment of admissibility

22. The Court first will examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, provided for in the Law and as further specified in the Rules of Procedure.
23. In this respect, the Court refers to 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."
24. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

"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"

25. The Court further takes into account Rule 36 (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”.

26. The Court notes that the Applicants’ central allegations revolve around their right to protection of property and them not being given the opportunity by the courts of general jurisdiction to have proceedings conducted in their native language.
27. At the outset, the Court notes that the onus is on the Applicants to meet all procedural requirements before having their allegations on protection of property and use of native language-considered by this Court.
28. In the case at issue, the Court notes that the referral was submitted on 2 December 2017, whereas the challenged judgment of the Court of Appeals was served upon the Applicants on 5 June 2017, as evidenced by the receipt submitted with the Court by the representative of the Applicants. It follows, that the referral was submitted two (2) months beyond the deadline provided for by Article 49 of the Law.
29. In this respect, the Court notes that it is estopped to consider the allegations on protection of property and use of native language submitted by the Applicants, due to them failing to meet the four month deadline provided for by Article 49 of the Law.
30. The Court recalls that the purpose of the four-month deadline under Article 49 of the Law and Rule 36 (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 no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).
31. The rules on the procedure and 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, the Case of *Beleš and others v. the Czech Republic*, ECtHR, application no. 47273/99, Judgment 12 November 2002, paragraph 60 and the references cited therein).
32. What is more, 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 36 (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).

33. Based on the foregoing considerations, the Referral, on a constitutional basis, is out of time and must be declared inadmissible as established by Article 113 (1) and (7) of the Constitution, provided for by Article 49 of the Law and as further specified by Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, on 20 April 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. TO DECLARE this Decision effective immediately.

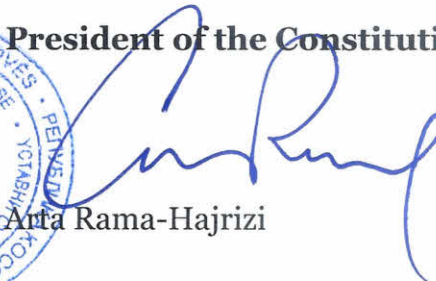
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi