



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 11 June 2018
Ref. No.: RK 1277/18

RESOLUTION ON INADMISSIBILITY

in

Case no. KI146/16

Applicant

Ljubinko Stojković

**Constitutional review of the Ruling [CN. no. 9/2013] of the Basic Court in
Ferizaj - Branch in Shtërpce of 6 September 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 Ljubinko Stojković of village Jazhince, municipality of Shtërpce (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Ruling of 6 September 2016 [CN. no. 9/2013] of the Basic Court in Ferizaj - Branch in Shtërpce (hereinafter: the Basic Court), regarding the Applicant's "*proposal for regulating the borderline*" between his property and that of his neighbours.

Subject matter

3. The subject matter is the constitutional review of the challenged Ruling, which allegedly has violated the Applicants' rights and freedoms guaranteed by Article 35 [Freedom of Movement] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Articles 22 and 47 of the 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 Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 January 2017 the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi (Judge) and Gresa Caka-Nimani (Judge).
7. On 03 March 2017, the Court notified the Applicant about the registration of the Referral.
8. On the same date, the Court provided a copy of the Referral to the Basic Court, and requested it to provide comments on the Referral, if any, within 7 days.
9. On 16 March 2017, the Basic Court submitted comments on the Referral and included a copy of the complete case file.
10. On 05 April 2017, the Court decided to postpone consideration of the Referral.
11. On 08 May 2017, the Court requested the Applicant to complete the Referral Form, and to provide copies of all relevant court decisions and other documents in relation to his Referral.
12. On 30 May 2017, the Applicant submitted a completed Referral Form and a number of documents in support of his Referral.
13. On 30 May 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

14. On 23 April 1965, [P. no. 52/65] the Municipal Court in Ferizaj ruled on the boundary line between the property of the Applicant's legal predecessor and four neighbours, and on the use of an access road to this property.
15. On 9 April 1966, [GZ-740/65] the District Court of Pristina rejected the appeal by one of the neighbours and upheld the Ruling [P.no.52/65] of the Municipal Court in Ferizaj.
16. On 29 May 1967, [P. no. 319/67] the Municipal Court in Ferizaj ordered one of the neighbours to remove the blockage of the access road to the property of the Applicant's legal predecessor.
17. On 27 April 1969, the Municipal Court in Ferizaj issued a "*Permission of Enforcement*" authorizing the Applicant's legal predecessor to proceed to unblock the access road to the property.
18. On an unspecified date, the Applicant inherited the property. Allegedly, the borderline between the Applicant's property and his neighbours' was frequently a cause of dispute, and the Applicant's access to his property was regularly blocked.
19. On 26 September 2013, the Applicant filed with the Basic Court a proposal for the regulation of the borderline of his property with that of his neighbours, on the basis of the Ruling of the Municipal Court in Ferizaj of 23 April 1965, and the permission of enforcement of the Municipal Court in Ferizaj of 27 April 1969.
20. On an unspecified date, the Basic Court *ex officio* appointed a geodesy expert to help to identify the borderline. The Basic Court informed the parties of this appointment.
21. On 27 April 2016, the Basic Court held a session at which the geodesy expert was presented to the parties. In agreement with the parties and the geodesy expert, the Basic Court decided conduct a site visit, which was done immediately.
22. On 13 July 2016, the Basic Court held a session at which the geodesy expert explained that there were discrepancies between the information available in maps dating from the 1960s, the cadastral maps, and the present day situation at the site. The expert indicated that had made expenses to acquire this information. The Basic Court ordered the Applicant to pay the expert's expenses.
23. On 22 August 2016, the Basic Court held a session at which it confirmed that the Applicant had paid the expert's expenses. The geodesy expert presented his expertise. The Basic Court decided to return to the site in order to mark the borderline.
24. On 6 September 2016, the Basic Court held a session at the site, together with the parties, the geodesy expert, and officers of the Kosovo Police. The geodesy expert set out border points for the borderline, markers were installed and

photographs were taken. A number of border points were not yet marked and it was apparently agreed that this would take place at a later date. The Basic Court invited all persons present to sign the minutes of the session.

25. The Applicant asked that the expert also set out the borders of the access road and determine the servitude allowing him access to his property. The Basic Court rejected that request ruling that,

“In the end the [Applicant] demanded the laying down of the borderline for the road which is not an object of his proposal. The court rejected the [Applicant’s] request to discuss the right of servitude under the reasoning that this is not an object of the proposal.”

26. The Applicant did not agree with the Ruling of the Basic Court on the borderline and regarding the access road and the servitude. The Applicant refused to sign the minutes of the Basic Court session.
27. The Applicant’s case is still pending before the Basic Court.

Applicant's allegations

28. The Applicant alleges that the Basic Court, by its Ruling [CN. no. 9/2013] of 6 September 2016, violated his right to property as guaranteed by Article 46 [Right to Property] of the Constitution, because the Basic Court changed the borderline between his property and that of his neighbours. With its Ruling establishing a new borderline, the Basic Court has substantially affected the Applicant’s property.
29. The Applicant argues that he had requested the Basic Court to confirm the borderline as determined in the ruling of the Municipal Court of Ferizaj [P.no.52/65] of 23 April 1965, and as enforced by the decision of the Municipal Court in Ferizaj [P. no. 319/67] 29 May 1967. The Applicant alleges that the Basic Court ignored his request.
30. In addition, the Applicant alleges that by rejecting his request to determine the borderline of the access road and to decide upon the servitude allowing him access across his neighbours’ properties, with its Ruling the Basic Court has blocked his access to his property and thereby violated his right to freedom of movement as guaranteed by Article 35 [Freedom of Movement] of the Constitution.
31. The Applicant requests the Court to restore his previous property rights and his right of access to his property.

Assessment of admissibility of the Referral

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

33. In that respect, the Court refers to Article 113.7 of the Constitution which prescribes:

“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.”

34. The Court also refers to Article 47.2 of the Law which provides:

“2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

35. The Court further refers to Rule 36 (1) (b) of the Rules of Procedure which provides:

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

[...]

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”

36. The Court notes that in his Referral the Applicant alleges that the Basic Court violated his rights to property and freedom of movement through its Ruling on the borderline of his property and its refusal to decide on the borderline of his access road and the servitude allowing him to cross his neighbours' properties.

37. The Court notes that the Applicant's proceedings regarding his Proposal for Regulating the Borderline are still pending before the Basic Court.

38. Consequently, the Court considers that the Applicant has not yet exhausted all legal remedies provided by law in Kosovo, wherein he could raise his complaints regarding his rights to property and freedom of movement.

39. The rationale for the exhaustion rule is to afford the competent authorities, including the regular courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order provides effective legal remedies for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See: Resolution on Inadmissibility: *AAB-RIINVEST LLC, Prishtina vs. the Government of the Republic of Kosovo*, KI41/09 of 21 January 2010, and see: *mutatis mutandis*, ECtHR Judgment of 28 July 1999, *Selmouni v. France*, no. 25803/94).

40. In sum, the Court considers that in the present case there is no final decision of a competent authority which could be the subject of review by the Constitutional Court, because the Applicant has not exhausted all effective legal remedies provided by law in Kosovo.
41. Therefore, the Referral is to be rejected as inadmissible because of the Applicant has failed to exhaust all legal remedies provided by the law, as required by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

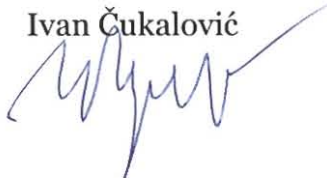
The Constitutional Court of Kosovo, in accordance with Article 113 (1 and 7) of the Constitution, Article 47.2 of the Law, and Rules 36 (1)(b) and 56 (2) of the Rules of Procedure, at its session held on 30 May 2018,

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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

