



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

Prishtina, 13 February 2014
Ref. No.: VMP 555/14

DECISION ON INTERIM MEASURES

in

Case No. KI06/14

Applicants

**Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and
Miroslava Ivanović**

**Constitutional Review
of the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10
of 18 September 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicants

1. The Applicants are Olga Petrović, Svetolik Patrnogić, Vesna Dejanović, with residence in Kragujevac, Republic of Serbia, and Miroslava Ivanović with residence in Roscoe, the United States of America.

Challenged Decision

2. The Applicants challenge the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 2013, which allegedly was served to the Applicant's temporary representative appointed ex officio by the Basic Court in Ferizaj on unspecified date.

Subject Matter

3. The subject matter is the request for constitutional review of the Judgment of the Basic Court, Pc. No. 559/10 of 18 September 2013, which they have not attached to the referral.
4. The Applicants allege that the challenged judgment was adopted in violation of their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in particular Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution. The Applicants also claim that their rights guaranteed by the Article 6 of the European Convention on Human Rights have been violated.
5. In addition, the Applicants request the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose interim measures, "*ordering the Municipal Cadastral Office in Ferizaj to revoke ownership of I. B. on cadastral parcel P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m2 and reinstate previous state, respectively, carry out registration od property rights to Julijana Patrnogić*".

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Article 22 and 27 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, Rules 54, 55 and 56 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

7. On 20 January 2014, the Applicants submitted the Referral to the Court.
8. On 31 January 2014, the President of the Court based on Decision GJR. KI06/14 appointed Judge Kadri Kryeziu as Judge Rapporteur.
9. On 31 January 2014, the President of the Court based on Decision KSH. KI06/14 appointed the Review Panel composed of Judges, Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
10. On 10 February 2014, the Constitutional Court informed the Applicants of the registration of the Referral. In the same letter, the Applicants were asked to submit to the Court the filled referral form and the challenged judgement. Furthermore, the Court asked the first Applicant Ms. Olga Petrović to submit an authorization letter for the fourth Applicant, Ms. Miroslava Ivanić.

11. On the same date, the Court also notified the Municipal Court in Ferizaj on the Referral.
12. Also on 10 February 2014, the Review Panel considered the Report of the Judge Rapporteur and recommended to the full Court to reject the Request for Interim Measures pending the final outcome of the Referral.

Brief Summary of the Facts

13. On 26 April 2011, the Basic Court in Kragujevac, Serbia issued Decision no. 0-517/10 and 0-518/10 and confirmed, inter alia, that the inheritance of the late Patrnođić Julijana consists of the property of the real estate in Ferizaj in the surface area of 1,46.71 ha. By the same decision 22 relatives, including the four Applicants, were declared as the successors of the late Patrnođić Julijana.
14. According to the Applicants, on 18 September 2013, the Basic Court in Ferizaj issued the challenged judgment Pc 559/10. The Applicants claim that in the proceedings before the Basic Court in Ferizaj they were represented by the temporary representative Mr. Hilmi Piraja, attorney from Ferizaj. They also claim that they could not establish contact with the temporary representative, who did not provide them with a copy of the challenged judgment.
15. On 27 November 2013, the Notary Nexhat Sh. Qorroli informed the attorney Miloš Petković from Štrpce as the authorized representative of the legal inheritors of the late Julijana Patronođić, of the following: *“addressing to civil proceedings is necessary, considering that the notary found that the real estate subject to this matter is undergoing civil proceedings and the Court rendered a Judgment that recognizes the right of property of B. I. from village Grebno on the cadastral parcel number P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m². Pursuant to the Court judgment, changes were conducted in the cadastral registry on the Municipality in Ferizaj”*.

Assessment of the Request for Interim Measures

16. In order for the Court to grant interim measure pursuant to Rule 55 (4) of the Rules of Procedure, it must find, namely, that:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and
(...)
If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”
17. In this respect, the Court notes that the Applicants have not provided any arguments nor have the Applicants shown any evidence as to why and how the interim measure is necessary to avoid any risk of irreparable damage, or

whether such a measure is in the public interest, as required by Article 27 of the Law. Therefore, the Court concludes that the request for interim measures must be rejected as ungrounded.

18. This conclusion does not preclude the Constitutional Court's assessment on the admissibility of the Referral.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and in accordance with Rules 55 (4) and 56 (3) of the Rules of Procedure, on 10 February 2014, unanimously,

DECIDES

- I. TO REJECT the request for interim measures;
- II. TO NOTIFY this Decision to the Parties; and
- III. TO PUBLISH this Decision in accordance with Article 20(4) of the Law.
- IV. This Decision is effective immediately.

Judge Rapporteur


Dr. Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani