



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Pristina, 8 July 2013

Ref. No.: RK446/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 09/12

Applicant

Lavdërije Telaku

**Request for Constitutional review of the Decision of the Supreme Court
of Kosovo Rev. I. no. 481/2009 dated on 18 October 2011**

and

**Judgment of the Supreme Court of Kosovo Ac. no. 79/2011 dated on 24
November 2011**

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.

Applicant

1. The Applicant is Mrs. Lavdërije Telaku (hereinafter: the Applicant), residing in Prizren.

Challenged decision

2. The challenged decisions are: Decision of the Supreme Court of the Republic of Kosovo, (hereinafter: Supreme Court) Rev. I. nr. 481/2012 of 18 October 2011 and Judgment of the Supreme Court, Ac nr. no. 79/2011 of 24 November 2011

Subject matter

3. The subject matter of the Referral is the assessment of the Constitutionality of the Supreme Court Decision Rev. I. no. 481/2009 of 18 October 2011 and the Supreme Court Judgment Ac. no. 79/2011 of 24 November 2011, concerning a family dispute. The Applicant claims that the consequences of these decisions violate her rights guaranteed with the Constitution of the Republic of Kosovo (hereinafter: the Constitution), without mentioning which specific rights.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: Law) and rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 31 January 2012, the Constitutional Court received the Referral submitted by the Applicant and registered it under no. KI 09/12.
6. On 1 February 2012, the Applicant has been notified on the registration of this Referral and additional documentation was required from her in order to complete the submitted referral.
7. On 21 February 2012, the President, by Decision No. GJR. 09/12, appointed Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 09/12, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Gjyljeta Mushkolaj (member) and Iliriana Islami (member).
8. On 2 July 2012, the President, by Decision GJR. 09/12 reappointed the new Review Panel composed of judges: Ivan Čukalović (presiding), Kadri Kryeziu, is appointed to replace Judge Gjyljeta Mushkolaj, since her terms of office as judge of the Constitutional Court had expired on 26 June 2012, and Arta Rama-Hajrizi, is appointed to replace Judge Iliriana Islami because her term of office on the Court had expired on 26 June 2012.

9. On 5 September 2012, from the Applicant was required to provide additional documentation respectively some decisions of the regular courts, regarding her case.
10. On 14 September 2012, the Applicant submitted the documentation required by the Court.
11. On 25 June 2013 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 the facts

12. The Applicant of the Referral had concluded on 7 February 1992 with A. T. From Prizren. From this marriage the couple has three children.
13. Due to deterioration of family relations, in 2004 they started living separately.
14. On an unspecified date the former husband of the Applicant, A.T. filed a request for divorce with District Court in Prizren.

The Procedure related to Decision of the Supreme Court Rev. I. no. 481/2009, in which the Applicant was presented as a plaintiff

15. On 15 March 2007 the Municipal Court in Prizren adopted its Judgment C. no. 21/2007, which approved the request of E.T., L.T., and F.T, who are represented by the Applicant as their legal representative.
16. In the operative part of the Municipal Court approved the request of the Applicant and ordered A.T. *“ to pay to the plaintiff as alimony 150 € for each minor child or in total 450 € a month , until the 5th of the coming month starting from 19.01.2007” [...] “until the legal requirements are in force or until this judgment is amended.”*
17. On an unspecified date A.T., files an appeal with the District Court in Prizren against Judgment C.br.21/2007.
18. On 17 June 2007, District Court in Prizren adopted Judgment Ac. nr. 241/2007, partially approving the appeal of A.T. and amends the Judgment C.nr.21/2001 of the Municipal Court in Prizren.
19. In the operative part of the Judgment, District Court states that *“A.T. from Prizren is obliged to contribute for supporting the minor children...” [...] “ as alimony to pay 80 € for each child, or in total 240 € a month, every 5th of the coming month starting from the date when the lawsuit was filed until the legal requirements are in force or until this judgment is amended.”*

20. On 30 January 2008 the Applicant submitted a request for emergency protection with the Municipal Court in Prizren requesting this court to *“order the responsible person A.T. from Prizren to pay monthly rent in an amount of 100 € for the protected party”*
21. On 30 January 2008, Municipal Court in Prizren adopts decision C.nr.865/07, approving the request and issues the order for emergency protection of the protected party.
22. In the operative part the Municipal Court *“orders the defendant A.T. to pay the monthly rent, in an amount of 100 € for the protected party, starting from 12 December 2005...”* [...] *“ the emergency protection order is effective immediately and the appeal does not suspend the execution”*
23. On 27 March 2008, A.T. files an objection against the decision to allow the execution of decision C.nr.865/07.
24. On 19 May 2008, Municipal Court adopts decision E.nr. 95/08, rejecting the objection of A.T. as ungrounded.
25. On 1 December 2008 deciding on an appeal of the defendant A.T., which was filed against Municipal Court in Prizren decision C.nr. 865/07 of 30 January 2008, District Court in Prizren adopted Decision AC.nr.105/08 annulling the Decision of Municipal Court and returns the case to first instance court for repeating the procedure and retrial.
26. District Court in the reasoning part stated that *“District Court confirmed that the factual situation was not fairly and completely assessed, which caused to wrong application of the substantive law.”*
27. On 19 May 2009, Municipal Court in Prizren in a repeated procedure adopts decision C. nr. 874/2008, rejecting the Applicant's request for emergency protection order. In the same time Municipal Court rejected request of the Applicant to use a part of the house where they used to live together while they were married.
28. In the reasoning part of its decision, Municipal Court in Prizren stated that *“The court of first instance rejects the request of protected party to issue an order for emergency protection, because District Court in Prizren on 15 June 2007 adopted decision Ac. br. 241/2007 obliging A.T. to pay monthly alimony in an amount of 80 € for each child”* [...] *“...based on its assessment the court does not find any reason to issue an order for emergency protection which would oblige the defendant to pay the monthly rent...”*
29. On an unspecified date the Applicant filed an appeal with the District Court in Prizren against decision C. nr. 874/2008 of the Municipal Court in Prizren for alleged violations of the provisions of civil procedure.

30. On 2 September 2009, District Court in Prizren adopts decision Ac.nr.323/2009, rejecting the appeal of the Applicant as ungrounded and confirms the decision C. nr. 874/2008 of Municipal Court in Prizren.
31. In its decision, District Court explained that it did not find that during the procedure there were violations of the provisions of civil procedure, even though, in her appeal, the Applicant did not specify which provisions were allegedly violated.
32. On an unspecified date the Applicant filed a request with the Supreme Court for revision of the District Court decision Ac. nr. 323/2009.
33. On 18 October 2011, Supreme Court adopted decision Rev. I. nr. 484/2009, rejecting the Applicant's request as ungrounded.
34. In the reasoning part of its decision, the Supreme Court stated that:

"The court of first instance, after the administration of the necessary evidence and hearing of the representative of Center for Social Welfare in Prizren, found that actions of the defendant do not constitute domestic violation as it is provided by Article 2.1.j of UNMIK Regulation 2003/12"

[...]

"The court of second instance in its procedure of appeal has confirmed completely the factual assessment and legal position of the court of first instance, rejecting as ungrounded the appeal of protected party and confirmed the decision of the court of first instance"

The Procedure related to Judgment of the Supreme Court Ac. no. 79/2011, in which the Applicant is presented as defendant

35. On 9 June 2011, District Court in Prizren adopted judgment C.nr.45/2011, which ended the marriage of the Applicant and A.T. with a divorce.
36. In its judgment, District Court rejected the Applicant's request for alimony in an amount of 250 €, while the request to live in the common house of A.T. or ordering him to pay monthly rent was declared ungrounded.
37. As a legal basis of its decision, Supreme Court states that *"the request of the defendant is rejected, since the plaintiff does not have a house on his name"* [...] *"and taking into account that he is not employed, and currently does not realize any income, he is not able to pay the rent."*
38. On an unspecified date, the Applicant filed an appeal with the Supreme Court, against Judgment C.nr.45/2011 of District Court in Prizren.

39. On 24 November 2011, Supreme Court adopted judgment Ac.nr.79/2011, which rejected the appeal of the Applicant as ungrounded and confirmed Judgment C.nr.45/2011 of District Court in Prizren.
40. In reasoning its judgment Supreme Court stated *"The court of first instance, based on the factual situation has applied correctly and completely the substantive law, when it rejected the request of the defendant for housing in the plaintiff's house or paying the rent for her." [...] "District court has considered all the facts and found that the plaintiff cannot be obliged for alimony and housing, because he is not employed and does not realize any income from other sources..."*

Applicant's allegations

41. The Applicant alleges that her rights as guaranteed by the Constitution have been violated. However, she does not specify any particular constitutional provision.
42. Furthermore, the Applicant states that during the procedures in the regular courts were caused violations of provisions of Family Law in relation to housing.
43. The Applicant also states that her former husband A.T. evicted her from the house and later did not allow her to come back.
44. Finally, the Applicant requests from the Constitutional Court:

"to annul the disputed decisions of the regular courts and approve the requests presented in submitted lawsuits"

Assessment of the admissibility of Referral

45. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
46. In this respect, the Court notes that Article 113.1 and Article 113.7 of the Constitution 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".*

and 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.”

47. The Court notes that the Applicant in her referral stated that the judgments and decisions of the regular courts violated Family Law, respectively provisions regulating the issue of housing. However, the Applicant did not specify which provisions of the Constitution or the Law have been violated.
48. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).
49. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).
50. However, having examined the documents submitted by the Applicants, the Constitutional Court does not find any indication that the proceedings before Supreme Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).
51. Therefore, the Applicants failed to show why and how the regular courts violated her rights as guaranteed by the Constitution. The Court notes that Decision of the Supreme Court of Kosovo Rev. I. no. 481/2009 dated on 18 October 2011 and Judgment of the Supreme Court of Kosovo Ac. no. 79/2011 dated on 24 November 2011 were well argued and reasoned.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, rule 36.2(b) and (d) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

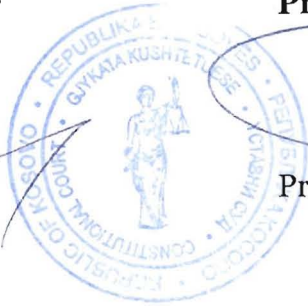
- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Prof. Dr. Enver Hasani