



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

Prishtina, 29 November 2013
Ref.No.:RK506/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI122/13

Applicant

Rizah Llumnica

**Constitutional review of the
Judgment Rev. no. 12/2011 of the Supreme Court of Kosovo,
dated 8 April 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

The Applicant

1. The Referral was submitted by Mr. Rizah Llumnica from Prishtina, represented by Mr. Halil Palaj (the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 12/2011 of the Supreme Court of Kosovo, dated 8 April 2013, which was served to him on 21 May 2013.

Subject matter

3. The Applicant alleges that the challenged Judgment violated his rights guaranteed by the Constitution, namely Articles 46 [Protection of Property] and 31 [Right to Fair and Impartial Trial].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 13 August 2013, the Applicant submitted the Referral to the Court.
6. On 30 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama.
7. On 11 September 2013, the Court informed the Applicant on the registration of the Referral and requested the certificate of receipt confirming the date of notification of the Judgment of the Supreme Court. On the same date, the Court also informed the Supreme Court of the Referral.
8. On 24 September 2013, the Applicant submitted the requested certificate of receipt.
9. On 21 October 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 facts

10. On 4 July 2001, the Applicant filed a claim with the Municipal Court of Prishtina against the Prishtina Municipality for ascertainment of his right to a immovable property.
11. On 8 June 2007, the Municipal Court of Prishtina (Judgment C.no.733/01) rejected the Applicant's claim as ungrounded.

12. The Applicant filed an appeal with the District Court of Prishtina, due to the violation of the provisions of the contentious procedure, and erroneous and incomplete application of the material law.
13. On 21 September 2010, the District Court of Prishtina (Judgment Ac.no.146/2008) rejected as ungrounded the appeal of the Applicant, reasoning that *“the appeal claims are not related to the statement of claim, confirmation of the right of property but are exclusively related to the procedure and the expropriation ruling of year 1976”* which are two different procedures and that *“the claimant against the mentioned Ruling could only initiate an administrative conflict pursuant to Article 3 of the Law non Administrative Conflicts”*.
14. On 27 October 2010, the Applicant filed a revision with the Supreme Court, due to erroneous application of material law, alleging that *“this immovable property was private property of claimant’s father, grandfather and great grandfather, where he has lived with his family and there is no law in the world and in the states with functional democracy, which is also applicable in the Republic of Kosovo, that can deny his right of property and the acknowledging of his right of property”*.
15. On 8 April 2013, the Supreme Court (Judgment Rev.no.12/2011) rejected as inadmissible the revision of the Applicant, because *“the value of this contested matter was not defined at all in this claim, whereas the claimant paid the court tax on the claim at the amount of 20 DM, thus pursuant to the registry on the court taxes of the Municipal Court in Prishtina, which is found in the case file, implies the contest values between 25-250 Euro, it is found that his value of the contest of 250 Euro, for which the court tax has been paid at the amount of 20 DM, does not exceed the amount envisaged pursuant to the provision of Article 382 paragraph 2 of the LCP in conjunction to the Article 2 under item (i) of the UNMIK Administrative Instruction no.2001/10”*.

Applicant’s allegations

16. The Applicant alleges a violation of Articles 46 and 31 of the Constitution, claiming that *“the guaranteed right to property has been violated, his property for 80 years of Rizah Llumnica’s father expropriated not for public interests but rather personal for the state security inspectors. The right of private property is sacred untouchable and inviolable.”*
17. The Applicant concludes requesting the Constitutional Court to *“annul the Judgment of Supreme Court of Kosovo Rev.no.12/2011 dated 08.04.2013 and order a merited review of the revision.”*

Admissibility of the Referral

18. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.
19. In that respect, the Court refers to Article 113 of the Constitution which establishes:

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 exhausting all legal remedies provided by law.*

20. In addition, the Court also refers to Article 49 of the Law, which provides:

The referral should be submitted within a period of four (4) months.

21. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights before the Municipal and District Courts and, finally, before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment on 15 of July 2013 and filed his Referral with the Court on 21 May 2013.

22. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

23. Consequently, the Court concludes that the Referral meets the admissibility requirements set up by Article 113.7 of the Constitution and by Article 49 of the Law.

24. However, the Court must take into account 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 (...).

25. In addition, the Court also refers to Rule 36 of the Rules, which foresees:

(1) The Court may review referrals only if:

[...]

(c) The referral is not manifestly ill-founded.”

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

[...],

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

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

26. The Court notes that the Applicant challenged before the Supreme Court the Judgment of the District Court due to erroneous application of material law. He

is challenging before the Constitutional Court the Judgment of the Supreme Court because “*the guaranteed right to property*” and “*the right to a fair and impartial trial*” have been violated by the challenged decision.

27. The Court further notes that the Supreme Court rejected the revision of Applicant as inadmissible because the “*value of the contest of 250 Euro, for which the court tax has been paid at the amount of 20 DM, does not exceed the amount envisaged pursuant to the provision of Article 382 paragraph 2 of the LCP in conjunction to the Article 2 under item (i) of the UNMIK Administrative Instruction no.2001/10*”. Thus, the value of the contest determined this way by the Supreme Court was 250 Euros which is well below the 800 Euros threshold for the revision to be admissible under the Law on Contested Procedure.
28. The Court considers that the justification provided by the Judgment of the Supreme Court is clear and well reasoned in answering the allegation of the Applicant.
29. On the other side, the Applicant does not accurately clarify why and how the decision of the Supreme Court rejecting the revision because of the insufficiency of the monetary value has violated his right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution.
30. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).
31. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, Edwards v. United Kingdom, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
32. The Court considers that the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See, *mutatis mutandis*, Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).
33. In sum, the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See Vanek v. Slovak Republic, No. 53363/99, ECtHR, Decision of 31 May 2005).
34. It follows that the Referral is manifestly ill-founded and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) c) and (2) b) and d) and 56 (2) of the Rules, on 21 October 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. dr. Enver Hasani