



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

Prishtina, 3 July 2015
Ref. no.: RK 808/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI139/14

Applicant

Mile Milosavljević

**Constitutional Review of Judgment Rev. no. 124/2014, of the Supreme
Court of Kosovo, of 13 May 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Mile Milosavljević (hereinafter: the Applicant), represented by Mr. Bekim Sylejmani, lawyer from Shterpce.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13 May 2014, in conjunction with Decision CA. no. 2777/2012, of the Court of Appeal of Kosovo, of 12 February 2014 and Judgment C. no. 50/2010, of the Municipal Court in Ferizaj-Branch in Shterpce.
3. Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo was served on the Applicant on 23 June 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which *“allegedly is unfair because it denied the Applicant’s right to fair and impartial trial and the right to property”*.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 16 September 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 7 October 2014, the President of the Court, by Decision no. GJR. KI139/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI139/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović (members).
8. On 22 October 2014, the Applicant was notified on the registration of Referral and a copy of the Referral was submitted to the Supreme Court of Kosovo.
9. On 2 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.
10. On 26 June 2015, the mandate of Judge Rapporteur Kadri Kryeziu and of the President of the Court prof. dr. Enver Hasani had ended. This resolution is therefore signed by the President of the Court and the Presiding Judge of the Review Panel in accordance with Rule 57 (7) of the Rules of Procedure.

Summary of facts

11. On 17 June 2010, the Applicant’s father B. M. concluded a contract on life endowment with the third party S. M., and the latter was certified in the Municipal Court in Ferizaj-Branch in Shterpce.

12. On an unspecified date, the Applicant filed a claim with the Municipal Court in Ferizaj-Branch in Shterpce with the request to annul the contract on life endowment, concluded between the Applicant's father B. M. and the third party S. M.

13. On 30 September 2011, the Municipal Court in Ferizaj-Branch in Shterpce, by Judgment C. no. 50/2010 established that:

“The statement of claim of claimant Milosavljevic from village Jazince, Municipality of Shterpce, the residence in Vrhnik of Slovenia, against the respondent Suzana Milosavljevic from village Jazince, Municipality of Shterpce is REJECTED AS UNGROUNDED and the Contract on life endowment between Bogoljub Milosavljevic from village Jazince Municipality of Shterpce and now the respondent Suzana Milosavljevic from village Jazince, Municipality of Shterpce, concluded on 30.10.2008 and certified in the Municipal Court in Ferizaj - Branch in Shterpce Nd. no. 120/10 of 17.06.2010 is UPHELD.”

14. On an unspecified date, the Applicant filed an appeal with the Court of Appeal of Kosovo.

15. On 12 February 2014, the Court of Appeal of Kosovo, by Decision Ca. no. 2777/2012 established that:

“The appeal of Mileta Milosavljevic from village Jazince, Municipality of Shterpce is REJECTED as ungrounded, while the Judgment C. no. 50/2010 of the Municipal Court in Ferizaj, Branch in Shterpce, of 30.09.2011, is UPHELD”.

16. On an unspecified date, the Applicant filed a revision with the Supreme Court of Kosovo.

17. On 13 May 2014, the Supreme Court of Kosovo, by Judgment Rev. no. 124/2014 established that:

“The revision of claimant, filed against the Judgment Ac. no. 2777/2012, of the Court of Appeal of Kosovo, Prishtina, of 12.2.2014, is rejected as ungrounded”.

18. In the abovementioned Judgment, the Supreme Court of Kosovo, reasoned:

“Setting from such a situation of the matter, the Supreme Court of Kosovo, found that the lower instance courts, determined correctly and completely factual situation, and correctly applied the contested procedure provisions and the material law, when they found that the claimant's statement of claim is ungrounded. The Judgment of the first instance court and of the second instance court contain sufficient reasons for relevant facts, for fair adjudication of this legal matter, which are recognized by the court of revision, too.

The Supreme Court of Kosovo assessed as ungrounded the abovementioned allegation in the revision that all the goods benefited by the respondent under the contract on life endowment, originate from the criminal offence pursuant to the Judgment P. no. 86/12 (which judgment was submitted together with the revision), since the party in the contract for life endowment as person receiving the maintenance and person giving the maintenance may be every natural person that has the capacity to conclude the contract according to general rules of the civil law and is not limited only to persons with family relations, or persons who have mutual obligations. Therefore, according to the assessment of this court of revision, the fact that the criminal procedure was conducted, regarding the annulment of the marriage between the person receiving the maintenance and here the respondent as the person receiving the maintenance (since the latter concluded the marriage before the parallel bodies), is not a legal ground for annulment of the contract on life endowment, because it is not legal requirement that they are spouses. This Court added that the contracting parties agreed on the essential component parts of the contract (Article 26 of LOR), by stating their own will freely and seriously, in a manner that they have legalized the contract in the Court, according to the provided legal procedure, therefore the allegation mentioned in the revision that the material law was applied in an erroneous manner is ungrounded.”

Applicant’s allegations

19. The Applicant addresses the Court: “... the Constitutional Court of the Republic of Kosovo finds that by final Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13.05.2014 and by the previous judgments were violated the Constitution and the applicable law, the property right, equality before law, fair and impartial trial to the detriment of the appellant since in all procedural actions taken by the court was not determined the fact that this matter as of the beginning was a result of the criminal offense of falsifying the documents (marriage) from which originated all other legal consequences, which were not correctly and lawfully assessed by regular courts”.
20. The Applicant also requests from the Court: “We also request from the Constitutional Court of Kosovo, as the last instance, to annul the Judgment of the Supreme Court of Kosovo, the Decision of the Court of Appeal and the Judgment of Basic Court in Ferizaj - Branch in Shterpce and the matter be remanded for impartial retrial and based on evidence in order to annul the contract of the life endowment”.

Admissibility of the Referral

21. The Court observes that, in order to be able to adjudicate the Applicant’s Referral, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. Regarding the Applicant’s Referral, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”

23. The Court also refers to 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.”

24. The Court also refers to Rule 36 (2) (c) of the Rules of Procedure, which provides:

“(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

...

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution”.

25. With respect to the allegations raised by the Applicant, the Court considers that the Supreme Court has elaborated and reasoned well on: i) who are the subjects that have the capacity to conclude the contract for life endowment, ii) the relationship that is created between the subjects that conclude the contract for life endowment, iii) the manner how this created relationship by the contract for life endowment was legalized, and iv) the reasons why the Applicant's allegation regarding the illegality of the contract for life endowment is unfounded.
26. Moreover, regarding the Applicant's allegations that *“the regular courts have not assessed in a correct and lawful manner”*, the Court considers that it is not its role to assess itself the facts which have led the regular courts to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of fourth instance, which would be to disregard the limits imposed on its jurisdiction (see case *Kemmache v. France*, No. 17621/91, ECHR, Judgment of 24 November 1994, para. 44).
27. The Court also considers that the Applicant's allegations raise questions of legality and assessment of facts about what is in fact, under the Constitution, the scope and prerogative of the regular courts.
28. The Court emphasizes that it is not its task to deal with errors of fact of law (legality) allegedly committed by the regular courts, when assessing the evidence or applying the law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In the case at hand, the Applicant's allegations do not raise questions of constitutionality.
29. The Constitutional Court recalls that it is not a fact-finding Court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts, and that the role of the Constitutional Court is

solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a “fourth instance court” (See case, *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

30. Moreover, the Referral does not indicate that the regular courts have acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
31. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
32. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, because the facts presented by him do not show in any way that the regular courts have denied him the rights guaranteed by the Constitution.
33. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (c) of the Rules of Procedure, on 3 July 2015, 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; and
- IV. This Decision is effective immediately.

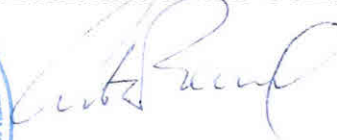
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Arta Rama-Hajrizi