



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

Prishtina, 13 June 2014
Ref. no.:RK639/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI28/14

Applicant

Skender Mezini and Ferbend Haxhijaj

**Constitutional review
of the Judgment Rev. No. 26/2012 of the Supreme Court of Kosovo
of 16 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

Applicant

1. The Applicants are Mr. Skender Mezini and Mr. Ferbend Haxhijaj (hereinafter: the Applicants), citizens of the Republic of Albania with residence in Durrës, Republic of Albania.

Challenged decision

2. The challenged decision is the Judgment Rev. no. 26/2012 of the Supreme Court of Kosovo, of 16 September 2013, which was served on the Applicants on 11 November 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgments of the Municipal Court in Deçan, (C. No. 54/2010, of 5 February 2010), and of the Supreme Court (Rev. no. 26/2012, of 16 September 2013) regarding the Applicants' request for confirmation of the property rights over an immovable property on the basis of the inheritance.
4. The Applicants also request from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) *"TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Decan C. nr. 54/2009 dated 05.02.2010 and to stay any execution and alienation whatsoever of the real estate until the conclusion of this civil matter."*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Articles 27 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 10 February 2014, the Applicants submitted their Referral to the Court.
7. On 6 March 2014, the President of the Court, by Decision GJR. KI28/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI28/14, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 25 March 2014, the Court notified the Applicants of the registration of Referral and requested from them to complete their referral.
9. On 10 April 2014, the Applicants submitted to the Court only the copies of the challenged Judgments.
10. On 10 April 2014, the Court notified the Supreme Court of the Referral. On the same date, the Court requested from the Basic Court in Peja, Branch in Deçan, to provide a copy of the return paper, which shows when the Judgment of the Supreme Court Rev. no. 26/2012, of 16 September 2013 was served on the Applicants.

11. On 16 April 2014, the Basic Court in Peja, Branch in Deçan, submitted to the Court the return paper, which shows that the Judgment Rev. no. 26/2012, of 16 September 2013, was served on the Applicants on 11 November 2013.
12. On 19 May 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible and to reject the request for interim measure.

Summary of the facts

13. In 2002, the Applicants and other family members filed a claim with the Municipal Court in Deçan against the possessors of an immovable property in Junik, on the basis of the inheritance, requesting the confirmation of the ownership over this immovable property.
14. The Applicants alleged that the immovable property concerned was the property of their predecessor, from Junik.
15. On 8 December 2006, the Municipal Court, by Judgment C. no. 208/2002, determined that the Applicants and other claimants, were the owners of the immovable property on the basis of inheritance and obliged the possessors to hand over the immovable property, registered as cadastral plots, under respective numbers based on the possession list, to the Applicants and other claimants, within the time limit of fifteen (15) days, after the Judgment became final.
16. Based on the chronology of the procedure, which was conducted after the abovementioned Judgment of the Municipal Court, C. nr. 208/2002, it appears that the case was remanded to the Municipal Court for reconsideration.
17. On 5 February 2010, the Municipal Court in Deçan, by Judgment C. no. 54/09, rejected the claim of the Applicants and of other claimants for confirmation of the ownership over the immovable property on the basis of inheritance.
18. The Municipal Court, based on the records of the Directorate for Cadastre, Geodesy and Property of Deçan, and the assessment of the experts, determined that the respondents' predecessors acquired the property right based on the valid legal affair for acquisition of the property right.
19. The Applicants and other claimants filed an appeal with the District Court in Peja against the Judgment of the Municipal Court in Deçan, C. no. 54/09, of 5 February 2010.
20. On 10 October 2011, the District Court in Peja, by Judgment Ac. no. 145/10, rejected as ungrounded the appeal of the Applicants and of other claimants and upheld the Judgment of the Municipal Court in Deçan, C. no. 54/09, of 5 February 2010.
21. The District Court also determined that the respondents' predecessors acquired the property right based on the sale-purchase contracts, concluded in writing and certified with the court and as a result of the possession of this immovable

property for over 20 years as legal possessors, the respondents acquired the property right.

22. The Applicants and other claimants filed a revision with the Supreme Court of Kosovo against the Judgment of the District Court in Peja, alleging substantial violation of the contested procedure provisions and erroneous application of the substantive law.
23. On 16 September 2013, the Supreme Court rejected as ungrounded the revision filed by the Applicants and other claimants.
24. The Supreme Court in its judgment held:

[...]

“According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the material law, when it rejected as ungrounded the claimants’ appeal and upheld the first instance court judgment, and for this provided sufficient reasons, which are admitted by this court too. The lower instance courts have correctly assessed that the respondents have acquired the property right based on the sale-purchase contracts, concluded in written form, as provided by the Law on the Transfer of Real Property, signed by the contracting parties and certified in the Municipal Court in Peja, which according to the Law on Transfer of Real Property, presents valid legal transaction, for derivative acquisition of the property right, pursuant to Article 20 par. 1 of the Law on Basic Property Relations and pursuant to Article 36 of the Law on Property and other Real Rights in Kosovo. The respondents were both lawful possessors and in good faith by possessing the immovable property for more than 20 years, which is also the ground for acquisition of the property right.

[...]

The second instance court in its judgment gave reasons for all appealed allegations, including also the statements of witnesses, therefore the Supreme Court of Kosovo assesses as ungrounded the allegation, repeated in the revision that the court has not assessed the fact that the claimants’ predecessors left in safe custody the immovable property to the respondents’ predecessors, when they left Kosovo.”

Applicant’s allegations

25. The Applicants allege that the court judgment violated their rights, guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.
26. In this respect, the Applicants allege as follows:

“The applicants consider among the other that they were not enabled as heirs of the first rank of inheritance to enjoy the property right over the immovable property of their predecessors.

Furthermore, when the circumstances and the possibilities of that time are known, when there was not even a theoretical possibility to ask for the implementation of their right to inheritance, taking into account the political situation at that time in Albania and in former Yugoslavia. It was stated among the other, that the latter as citizens, legally ignorant and without influence on the regular courts, were manipulated and deceived.”

27. The Applicants request the following:

“[...] the annulment of final Judgment of the Municipal Court in Deçan C. no. 54/2010 and of the Judgment of the Supreme Court Rev. No. 26/2012”.

“TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Deçan C. nr. 54/2009 dated 05.02.2010 and to stay any execution and alienation whatsoever of the real estate until the conclusion of this civil matter”.

Admissibility of the Referral

28. In order to be able to adjudicate the Applicants’ referral, the Court needs to examine beforehand whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. In this respect, Article 113, paragraph 7, of the Constitution 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”.

30. The Court also takes into account Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals 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:

[...], or

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

[...], or

d) when the Applicant does not sufficiently substantiate his claim.”

31. As stated above, the Applicants allege that the Judgment of the Supreme Court, Rev. no. 26/2012, of 16 September 2013, has violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution.

32. In this regard, the Applicants have not explained at all how and why the Judgment of the Supreme Court violated their rights guaranteed by the Constitution.
33. The Applicants only state that “[...] *that they were not enabled as heirs of the first rank of inheritance to enjoy the right to the property of their predecessors [...] that the latter as citizens, legally ignorant and without influence on the regular courts, were manipulated and deceived.*”
34. In this respect, the Constitutional Court reiterates that under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
35. 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 Applicants had a fair trial (see among others authorities, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
36. Based on the case file, the Court notes that the reasoning provided in the Judgment of the Supreme Court is clear and, after reviewing the entire procedures, the Court found that the proceedings before the regular courts have not been unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).
37. Furthermore, the Supreme Court, in its Judgment, found that [...] “*According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the material law, when it rejected as ungrounded the claimants’ appeal and upheld the first instance court judgment, and for this provided sufficient reasons, which are admitted by this court too. The lower instance courts have correctly assessed that the respondents have acquired the property right based on the sale-purchase contracts, concluded in written form, as provided by the Law on the Transfer of Real Property...[...]*”.
38. For the foregoing reasons , the Court considers that the presented facts by the Applicants do not in any way justify their allegation of a violation of the constitutional rights and that the Applicants have not sufficiently substantiated how and why the Judgment of the Supreme Court has violated their rights, guaranteed by the Constitution.

Request for interim measure

39. As mentioned above, the Applicants also request from the Court “*TO TEMPORARILY SUSPEND the Judgment of the Municipal Court in Deçan C.nr.54/2009 dated 05.02.2010 and to stay any execution and alienation whatsoever of the real estate until the conclusion of this civil matter.*”

40. The Applicants have not presented any argument nor have they shown any evidence as to how and why the interim measure is necessary.

41. In order for the Court to grant an interim measure, pursuant to Rule 55 (4) of the Rules of Procedure, it must find 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.”

42. As it is concluded above, the Referral is inadmissible and for this reason there is no *prima facie* case for imposing an interim measure. For these reasons, the request for interim measure must be rejected.

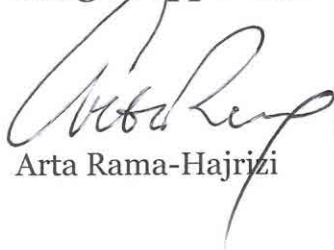
FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2) b) and d), 55 (4) and 56 (2) of the Rules of Procedure, on 13 June 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani