



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

Prishtina, 5 October 2017
Ref. No.:RK 1129/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI70/16

Applicant

Fazli Krasniqi

**Constitutional review of Judgment Rev. No. 185/2015, of the Supreme
Court of the Republic of Kosovo, of 28 December 2015**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Fazli Krasniqi from Junik (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. No. 185/2015, of the Supreme Court, of 28 December 2015, in conjunction with Judgment Ac. No. 3202/12, of the Court of Appeals of Kosovo, of 6 March 2015 and Judgment C. No. 63/09, of the Municipal Court in Deçan, of 8 February 2012.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. No. 185/2015, of the Supreme Court, of 28 December 2015, which has allegedly violated the Applicant's rights and freedoms guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession] and Article 53 [Interpretation of the Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 [Right to a fair trial] and Article 1 [Protection of Property] of Protocol No. 1 of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution (hereinafter: the Constitution), Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 April 2016, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 11 May 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 22 June 2016, the Court notified the Applicant about the registration of the Referral and requested the Applicant to submit to the Court the Referral form as well as to complete his Referral with relevant documents, namely by regular court decisions.
8. On 6 July 2016, the Applicant submitted to the Court the Referral form.
9. On 20 July 2016, the Applicant submitted to the Court the decisions of the regular courts.
10. On 27 July 2017, the Court notified the Supreme Court about the registration of the Referral.

11. On 4 September 2017, the Review Panel, after having considered the report of the Judge Rapporteur, unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 21 April 2009, the Applicant filed a statement of claim with the Basic Court in Deçan, requesting the confirmation of the ownership right based on inheritance over 1/2 of the ideal part of the immovable properties in the different cadastral plots, all registered under the possession list 391. From the case file it transcribes that this inheritance mass is a part of the inheritance of the daughter of the Applicant's uncle SH.K., which she inherited from her predecessor R.K., and who, on her own will, left the inheritance to other litigants (family members of the Applicant, in the capacity of the respondents in this court proceeding). In the statement of claim, the Applicant alleged that he is in the same inheritance rank with other litigating parties.
13. On 8 February 2012, the Municipal Court in Deçan (Judgment C. No. 63/09) rejected the statement of claim as ungrounded. its Judgment reads: *"the court concluded and determined without any doubt that the claimant had the opportunity while his predecessors were alive to clarify these relations, that an agreement on the division of the predecessors of litigants was not challenged within one year and one day according to the legal rules of civil law, but also under Article 117 of the LOR where it is provided that the right to claim nullity of a rescindable contract shall be terminated one year after becoming aware of the ground for making a contract rescindable."*
14. On an unspecified date, the the Applicant filed an appeal with the Court of Appeals, against Judgment C. No. 63/09, of 8 February 2012, of the Municipal Court in Decan, claiming essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
15. On 6 March 2015, the Court of Appeals (Judgment Ac. No. 3202/12) rejected the Applicant's appeal as ungrounded. In this Judgment, it is emphasized that: *"the first instance court by presenting the necessary evidence and in the presence of the indisputable facts correctly and completely determined the factual situation and by fair assessment of the evidence, has correctly applied the substantive law when it found that the statement of claim is ungrounded. ...in the reasoning of the judgment of the first instance court are given sufficient legal and factual reasons based on law which are approved by this court too."*
16. Against this Judgment, the Applicant submitted a revision to the Supreme Court, alleging the existence of essential violations of the provisions of the contested procedure and erroneous application of substantive law.
17. On 28 December 2015, the Supreme Court (Judgment Rev. No. 185/2015) rejected the Applicant's revision as ungrounded. The Supreme Court concluded that *"The first instance court has completely determined the fact that the respondents have been in possession and use of the immovable property in*

questioned for more than 30 years, who are in possession even after the death of Sh. K., in 1985, who lived until the moment of death in the family union with the respondents, which fact was not challenged either by the claimants until the day of filing the claim [...] For these reasons the allegations presented in the revision were found as ungrounded.”

Applicant’s allegations

18. The Applicant alleges that the challenged decision violated his rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution, in conjunction with Article 6 [Right to a Fair Trial] and Article 1 [Protection of Property] of Protocol No. 1, of the ECHR.
19. The Applicant further alleges that: *“the Judgment of the Municipal Court contains serious violations of the provisions of the contested procedure [...] because the challenged Judgment has flaws due to which it cannot be reviewed, and especially because the enacting clause of the challenged Judgment is in contradiction with the reasons, namely the challenged Judgment does not have any reasons for the decisive facts.”* The Applicant also alleges that the Court of Appeals by its Judgment has erroneously applied the substantive law.
20. The Applicant requests the Court to annul Judgment Rev. No. 185/2015, of the Supreme Court of 28 December 2015, Judgment Ac. no. 3202/12 of 6 March 2015 and Judgment C. No. 63/09 of the Municipal Court in Deçan, of 8 February 2012.

Admissibility of Referral

21. The Court must first examine whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure.
22. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

“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.”

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 further refers to Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) of the Rules of Procedure, which foresees:

“(1) The Court may consider a referral if:

(...)

d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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“.

25. In this case, the Court considers that the Applicant is an authorized party, that he has exhausted all available legal remedies and has submitted the Referral within the foreseen time limit. However, the Court must further assess whether the requirements established in Article 48 of the Law and provided for in Rule 36 of the Rules of Procedure have been met.
26. The Court recalls that the Applicant alleges that, by rejecting the claim for the confirmation of ownership as ungrounded, the decisions of the regular courts violated his rights guaranteed by the Constitution due to erroneous determination of the facts and erroneous legal interpretations.
27. In this regard, the Court notes that Judgment Rev. No. 185/2015 of the Supreme Court, of 28 December 2015, addressed and decided on the aforementioned allegations, which had already been brought before the first and second instance courts
28. In this regard, the Court refers to this Judgment of the Supreme Court, which concluded that the challenged Judgment of the Court of Appeals does not contain essential violations of the legal provisions, stating that “[...] *the courts of the lower instance, by correctly and completely determining the factual situation, correctly applied the provisions of the contested procedure and the substantive law when they found that the claimant’s statement of claim is ungrounded.*”
29. The Supreme Court further reasoned that: *“the enacting clause of the judgments of both courts is clear when decided upon the statement of claim of the claimant, respectively the appeal, that in the reasoning are given sufficient and convincing reasons for the decisive facts for fair adjudication of this legal matter, which is not in contradiction with the content of evidence from case file.”*
30. The Court notes that the Applicant does not agree with the outcome of the proceedings before the regular courts, challenging the assessment of evidence and determination of facts by these courts.
31. The Court recalls that it is not a fact-finding court and that correct and complete determination of the factual situation, as well as the relevant legal

interpretations, fall within the function of the regular courts. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore, it cannot act as a „fourth instance” court (see: ECtHR case, *Akdivar v. Turkey*, No. 21893/93, of 16 September 1996, para. 65, see also: case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

32. The Court emphasizes that it is its task to determine whether the proceedings, viewed in their entirety, were fair, including the way the evidence was taken (See case *Edwards v. United Kingdom*, No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
33. In the present case, the Court considers that the Applicant was able to adduce arguments and evidence he considered relevant to his case and to challenge the arguments and evidence adduced against him; that all the arguments and evidence which were relevant to the resolution of the case were duly heard and examined by the courts. Accordingly, it follows that the proceedings taken as a whole were fair. (See: case *Garcia Ruiz v. Spain*, [GC], application no. 30544/96, Judgment of 21 January 1999, paragraph 29).
34. Accordingly, the Court considers that the Applicant has not substantiated his allegations of violation of human rights and fundamental freedoms guaranteed by the Constitution, because the facts presented by him do not in any way indicate that the regular courts have denied him the right guaranteed by the Constitution, as alleged by the Applicant.
35. In this regard, the Court notes that the mere mentioning of relevant articles of the Constitution alleging that they have been violated without further explanations how these violations occurred, is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument (See Case of Constitutional Court, KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).
36. In conclusion, the Court finds that the Applicant failed to substantiate and prove on constitutional basis that the proceedings before the regular courts, including the Supreme Court, were unfair or arbitrary or that his rights and freedoms have been violated.
37. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, on 4 September 2017, 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;
- IV. This Decision is effective immediately.


Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi