



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 14 November 2014
Ref. no.: RK726/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI101/14

Applicant

Shkodran Pllana

**Constitutional review of
Judgment Rev. 41/2014 of the Supreme Court of Kosovo
dated 7 March 2014**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was submitted by Mr. Shkodran Pllana, represented by Mr. Behar Ejupi lawyer from Prishtina (hereinafter: the Applicant).

Challenged decisions

2. The Applicant challenges the Judgment Rev. 41/2014 of the Supreme Court of Kosovo dated 7 March 2014, served on the Applicant on 29 May 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly "*violated the principle of impartiality*".

Legal basis

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

Proceedings before the Constitutional Court

5. On 13 June 2014, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 26 June 2014, the Applicant submitted additional documents to the Court.
7. On 4 July 2014, the President of the Court by Decision No. GJR.KI101/14 appointed Judge Almiro Rodrigues as Judge Rapporteur and on the same date the President of the Court by Decision No. KSH.KI101/14 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Arta Rama-Hajrizi.
8. On 1 August 2014, the Court notified the Applicant about the registration of the Referral and sent a copy to the Supreme Court of Kosovo.
9. On 15 September 2014, Judge Enver Hasani by Decision No. KSH.KI101/14 was appointed member of the Review Panel instead of Judge Robert Carolan.
10. On 17 September 2014 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

11. On 9 September 2013, the Basic Court in Ferizaj (Judgment C. nr. 196/12) rejected the claim suit of the third parties for annulment of the sales contract concluded between them and the Applicant.
12. On 29 November 2013, the Appeals Court of Kosovo (Judgment Ac. nr. 3631/2013) rejected as unfounded the appeal of the third parties.
13. On 7 March 2014, the Supreme Court of Kosovo (Judgment Rev. 41/2014) determined:

“REJECTING as ungrounded the revision of the claimant RA from Ferizaj, filed against the judgment of the Kosovo Court of Appeals, Ac.no. 3631/2013 of 29.11.2013.

APPROVING as grounded the revision of claimant KA from Ferizaj, and amending the judgment of the Kosovo Court of Appeals Ac.no. 3631/2013, of 29.11.2013, and the judgment of the Basic Court in Ferizaj C. no. 196/12, of 09.06.2013, thereby approving as grounded the statement of claim of claimant KA, and in relation to her co-ownership of the property to the share of ½ to the property, recorded as a cadastral unit no. 01833-00, in the place called "M. Tita", the area of 351 m², as per immovable property rights certificate no. 02928 CZ Ferizaj, annulling the contract entered into by claimant Rexhep Ahmeti from Ferizaj, as seller, and the respondent Shkodran Sharr Pllana (Applicant), from Prishtina, as buyer, validated by the Municipal Court in Ferizaj, V. no. 1248/12 on 06.03.2012”.

14. In the abovementioned judgment, the Supreme Court reasoned that *“the claimant RA, without agreement and expressed consent of the spouse as wife and co-owner of the material property, has disposed of the whole disputed property. For the reasons mentioned above, and due to the fact that there is a contract on sale Vr. no. 1379/05 of 22.04.2005, invoked by the wife in her appeal and revision, while in case files, there are no evidence that the claimant has given any consent to the sale of disputed property. The Supreme Court finds that the revision of claimant is grounded, and therefore, for her share to the disputed property, which belongs to KA according to Article 47 of the Law on Family of Kosovo, and which was alienated by claimant RA in contradiction of Article 47.1 and 4, Article 50, paragraph 2 of the Law on Family, disputed contracts within the meaning of Article 103, paragraph 1 of the LOR, represents an void legal affair, namely null. For this reason, the lower instance judgments were amended, thereby approving as grounded the statement of claim of the claimant that the abovementioned contract be annulled with regards to the co-ownership part, as per item II of the enacting clause of this judgment”.*

Applicant’s allegations

15. The Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in connection with Article 6 (Right to a fair trial) of the European Convention of Human Rights (hereinafter, the Convention). The Applicant also alleges violation of Articles 3, 24 [Equality Before the Law], 21 [General Principles] and 54 [Judicial Protection of Rights] of the Constitution.
16. The Applicant, *inter alia*, alleges that based on article 215 of the Law on Contested Procedure *“the revision court examines the decision attacked only in the part that is attacked through revision and only within the boundaries of the causes shown by the revision, but taking care accordingly to the official obligation for rightful application of material law and for the violation of the provisions of the contested procedure, which deal with the capacity to be a party and regular representation”.*

17. The Applicant requests the Court to annul the judgment of the Supreme Court and to remand his case for retrial for the ½ of the immovability which was acknowledged by the Supreme Court to the opposing party.

Admissibility of the Referral

18. The Court first examines whether the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure have been fulfilled.
19. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

“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”.

20. Furthermore, the Court refers to Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision”.

21. However, the Court considers that the Applicant is an authorized person and he has exhausted all legal remedies, as prescribed by Article 113.7 of the Constitution, and the referral is filed within the four months legal deadline in compliance with Article 49 of the Law.
22. The Court also takes into account Rule 36 (1) c) and (2) d) 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

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

23. The Applicant claims on the extent of examination of the revision by the Supreme Court. The Court deems such a claim to be a question of legality that is within the ambit of regular courts which is interrelated to their independence in dispensation of duties and prerogatives conferred upon them by the Constitution.
24. In the case at issue, the Court notes that the Supreme Court of Kosovo provided reasoned legal and logically coherent arguments as to why the lower instance courts have erroneously applied the substantive law by explaining: i) the conditions under which immovable property can be fully alienated, and ii) the

rights and obligations of spouses in relation to their common property in the view of the applicable law in the Republic of Kosovo.

25. The Constitutional Court reiterates that the correct and complete determination of the factual situation and applicable law is a full jurisdiction of 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, ECtHR, Judgment of 16 September 1996, para. 65, also mutatis mutandis see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
26. Moreover, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the 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 were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
27. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial], of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
28. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.
29. Consequently, the Referral is manifestly ill-founded and must be declared as inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 17 September 2014, unanimously

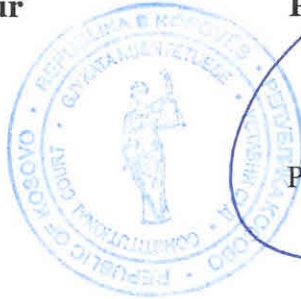
DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately;

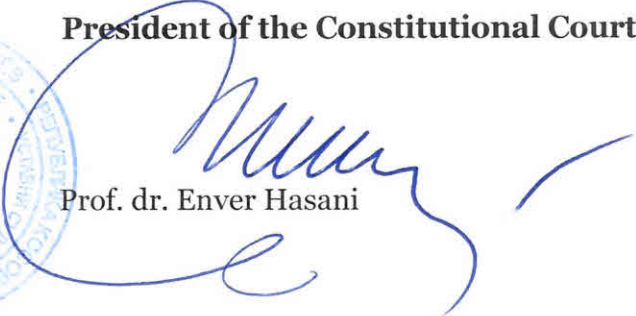
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. dr. Enver Hasani