



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

Prishtina, on 13 June 2016
Ref. No.: RK948/16

RESOLUTION ON INADMISSIBILITY

In

Case no. KI10/16

Applicant

Sanija Bajrami

**Constitutional review of Judgment Rev. no. 297/2014 of the Supreme
Court of Kosovo, of 16 December 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral KI10/16 was submitted by Mr. Sanija Bajrami from the village Pojatishte, Municipality of Ferizaj (hereinafter: the Applicant), represented by Lawyer Mr. Fatmir Bajraktari.

Challenged decision

2. In the Referral KI10/16, the Applicant requests the Court to correct its Resolution on Inadmissibility in Case KI64/15, and to reassess the constitutionality of Judgment Rev. No. 297/2014 of the Supreme Court of Kosovo of 16 December 2014, which was served on him on 20 January 2015.

Subject matter

3. The subject matter of the Referral is the correction of the Resolution on Inadmissibility in Case KI64/15 and re-assessment of the constitutionality of Judgment [Rev. no. 297/2014] of the Supreme Court of Kosovo of 16 December 2014.

Legal basis

4. Article 113, paragraph 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 20 and 50 of Law No. 03/L-121 on Constitutional Court (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 14 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 February 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 24 February 2016, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

Proceedings before the Court regarding the request for return to previous situation

8. On 15 October 2015, the Constitutional Court rendered a decision on Case KI64/15, where it found that the Applicant did not file the Referral within the legal time limit of four months, as provided by Article 49 of the Law and, therefore, declared the Referral inadmissible (See, Resolution on Inadmissibility of the Constitutional Court, Case KI64/15 of 15 October 2015).
9. On 14 January 2016, the Applicant filed an additional Referral with the Court, which is essentially a request to reconsider his case.
10. With the new Referral, the Applicant submitted new information, whereby he tries to prove that Referral KI64/15 was submitted to the Court within the legal deadline.
11. On 12 April 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Assessment of the request for return to previous situation

12. In order to be able to adjudicate the Applicant's request for the return of Case KI64/15 to the previous situation, the Court must first determine whether the Applicant has met the requirements provided by Article 50 of the Law, which provides:

„If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired.”

13. As to the new Referral KI16/16 of 14 January 2016, the Court finds that the evidence submitted proves that Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo of 16 December 2014 was served on the Applicant on 20 January 2015, while he submitted the Referral to the Court by mail on 19 May 2015, which is in accordance with Rule 29 (Filing of Referrals and Replies) of the Rules of Procedure, which, in its paragraph 8, states that:

“(8) A referral shall be filed in person at the office of the Secretariat of the Court during regular working hours, or shall be filed by mail or by means of electronic communication.”

14. Having reviewed the contents of the new Referral, the Court found that the Applicant's Referral of 20 January 2015 was submitted within the legal time limit in accordance with Article 49 of the Law.
15. Accordingly, the Court finds that the Applicant has met the requirements of Article 50 of the Law, and based on this, in the new Referral KI10/16, the Court will, therefore, assess the constitutionality of Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo of 16 December 2014.

Summary of facts

16. On 12 July 2002, the Applicant filed a claim with the Municipal Court in Ferizaj against N.B, M.B, dhe M.P., by which requested the confirmation of the property rights over the house and parcel no. 1847/3, with a surface area of 3.26 are, located at Trajko Gerkoviq Street in Ferizaj.
17. In the claim, the Applicant stated that “[...] in 1997, through the first respondent, N.B., he purchased the immovable property from the second respondent M.P. from Ferizaj, namely the house and the yard located in Ferizaj at “Trajka Gërkoviq” street which was registered as cadastral plot no. 1847/3, a total surface area of 3.26 are...”

18. On 1 July 2008, the respondents N.B. and M.B. filed a counterclaim with the Municipal Court in Ferizaj against the claimant (the Applicant) to confirm the property rights over the same property, which they allegedly had purchased.
19. On 7 December 2009, by Judgment C. no. 276/02, the Municipal Court in Ferizaj rejected the Applicant's claim as ungrounded, reasoning that: *"Based on the evidence presented, and their assessment pursuant to Articles 7 and 8 of the LCP, this Court found that the statement of claim of the claimant [the Applicant] for confirmation of the ownership rights over the said property through the purchase from the second respondent M.P., as a seller, is ungrounded in its entirety and as such must be rejected in its entirety ... "[...] while the counterclaim of the counter-claimants N.B. and M.B., for the confirmation of the property rights over the property is grounded in its entirety... ."*
20. The Applicant filed an appeal with the Court of Appeal against Judgment C. no. 276/02 of the Municipal Court in Ferizaj of 7 December 2009 due to a substantial violation of the law and an erroneous determination of the factual situation.
21. On 2 September 2014, by Judgment Ac. no. 1961/2012, the Court of Appeal rejected the Applicant's appeal as ungrounded with the reasoning: *"... in such a created situation, the Court of Appeal held that in fact the claimant did not substantiate by any evidence the allegations filed in the statement of claim and the first instance court correctly rejected his statement of claim as ungrounded."*
22. In the conclusion of the Judgment of the Court of Appeal it is stated that: *"All allegations of the claimant, namely of his representative in the appeal, or in the supplement to the appeal, were rejected as ungrounded by the second instance court, because they were not supported by any concrete evidence. The appealed allegations of the counter-claimant respondent [the Applicant] that the challenged judgment contains substantial violations of the provisions of Article 182, paragraph 1, in conjunction with Articles 8 and 321 and Article 182, paragraph 2, item 1 in conjunction with Article 348 of the Law on Contested Procedure, are ungrounded."*
23. Thereupon, the Applicant submitted a request for revision to the Supreme Court against Judgment Ac. no. 1961/2012 of the Court of Appeal of 2 September 2014.
24. On 16 December 2014, the Supreme Court by Judgment Rev. no. 297/2014 rejected as ungrounded the Applicant's request for revision of the Judgment of the Court of Appeal, of 2 September 2014, with the reasoning: *"As regards the erroneous application of the substantive law (on which the Applicant based his request for revision), they are ungrounded, as the lower instance courts found by credible evidence that the purchaser of the subject property was the respondent N.B., not the claimant (the Applicant) Sanija Bajrami."*

Applicant's allegations

25. The Applicant considers that: *"the courts rendered unfair and partial decisions. Therefore, there was a flagrant violation of the provision of Article 31 of the Constitution."*
26. The Applicant requests the Court *"to annul the decisions of the regular courts of Kosovo, and to render a decision by which it will remand this case to the first instance court for reconsideration."*

Admissibility of the Referral

27. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the admissibility requirements have been met, which are laid down in the Constitution and are further specified in the Law and Rules of Procedure.
28. In this regard, 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."
29. Moreover, the Court refers to Article 48 of the Law, which states:

"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 a public authority is subject to challenge"
30. The Court also recalls Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which provides:

*"(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".*
31. Having reviewed the Referral, the Court notes that the Applicant considers that the challenged judgment violated his right under Article 31 of the Constitution and Article 6 of the European Convention on Human Rights (hereinafter: ECHR), because the courts have erroneously determined the factual situation and incorrectly applied the substantive law when deciding on the merits of his statement of claim.

32. The Court notes that in determining the merits of the Applicant's appealed allegations of violation of the constitutionally guaranteed rights, it shall observe the principles established by the case law of the European Court of Human Rights (hereinafter: ECtHR) according to which *"the fairness of the proceedings is assessed looking at the proceedings as a whole"* (ECHR, *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, series A, No. 146, paragraph 68)."
33. Accordingly, the Court analyzed the judgments of the regular courts and found that, in their judgments, they already dealt with the Applicant's appealed allegations related to the erroneous application of the provisions of the substantive law and the erroneously determined factual situation, concluded that those allegations were ungrounded.
34. In this regard, the Court notes that the judgments of the Municipal Court and of the Court of Appeal contained detailed explanations regarding the factual situation and the application of the substantive law, which were also accepted by the Supreme Court.
35. The Court further notes that the Applicant built his Referral before it solely on the allegations which have already been reasoned in the judgments of the regular courts.
36. In this regard, the Court is of the opinion that the judgments of the regular courts are based on a legally conducted procedure and on the constitutionally acceptable interpretation and application of the relevant substantive law on the factual situation as established in the court proceedings.
37. Moreover, as regards the Judgment of the Supreme Court challenged by the Applicant, the Court notes that, in that Judgment, the Applicant's claim that the lower courts had wrongly established the factual situation, was rightly rejected as inadmissible on the ground that, pursuant to Article 214.2 of the LCP, *"Revision cannot be presented due to the wrong ascertainment or incompleteness of the factual state."*
38. Therefore, the Court considers that the regular courts acted in accordance with the basic principles of the right to a fair trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
39. From the above, the Court notes that the judgments of the regular courts were in accordance with the ECHR case law, according to which: *"the domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, but at the same time are obliged to give reasons for its decisions so as to provide clear and understandable reasons on which those decisions were based"* (See ECHR, *Suominen v. Finland*, Judgment of 1 July 2003).
40. In sum, the Court emphasizes that the Applicant's dissatisfaction with the outcome of his case cannot of itself raise an arguable claim of a violation of constitutional provisions. (See case: *Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR Judgment of 26 July 2005).

41. The Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and the ECHR (See, case No. KI19/14 and KI21 14 Applicants *Tafil Qorri and Mehdi Syl*a, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013).
42. 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 regular courts. It is the role of the regular courts to interpret and apply pertinent rules of procedural and substantive law (See, case *Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; See also Case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
43. Finally, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because in his Referral he did not substantiate his claim that the challenged decision violates his rights guaranteed by the Constitution and the ECHR.
44. It follows that the Referral has to be declared inadmissible as manifestly ill-founded, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, on 12 April 2016, 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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi