



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

Prishtina, on 2 February 2016
Ref. No.:RK886/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI111/15

Applicant

Musa Shkodra

**Request for constitutional review of Judgment E. Rev. 64/2014, of the
Supreme Court, of 18 March 2015**

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 Applicant is Mr. Musa Shkodra from Kamenica (hereinafter: the Applicant), who is represented by lawyer Mr. Ymer Huruglica from Gjilan.

Challenged decision

2. The Applicant challenges Judgment E. Rev. no. 64/2014, of the Supreme Court of 18 March 2015, which was served on the Applicant on 27 April 2015.

Subject Matter

3. The subject matter of Referral KI111/15 is the constitutional review of the Judgment of the Supreme Court of Kosovo, which due to erroneous application of the substantive law and erroneous determination of factual situation, has allegedly violated the rights and freedoms guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter: the Constitution).

Legal Basis

4. Article 113.7 of the Constitution, Article 49 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 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 20 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 September 2015, the President of the Court by Decision no. GJR. KI111/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI111/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 2 October 2015, the Court informed the Applicant and the Supreme Court about the registration of Referral.
8. On 22 December 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant and Mr. S. H., in capacity of co-owners established the company SOE "Shkodra" (hereinafter: SOESH).
10. On an unspecified date, Mr. S. H. filed a lawsuit with the Basic Court in Prishtina- Department for Commercial Matters (hereinafter: the Basic Court) against the Applicant, by which he requested the exclusion of the Applicant as a co-owner of the company SOESH.
11. On 17 July 2013, the Municipal Court in Prishtina, in accordance with Article 29 of the Law on Contested Procedure (hereinafter: LCP) and Article 13

paragraph 1 of the Law on Courts, the court ascertained the jurisdiction to consider this dispute, and, accordingly, rendered Judgment C. no. 482/2012, by which approved the lawsuit of S.H. as grounded.

12. In the enacting clause of the Judgment of the Basic Court is stated: *„In the procedure of evidence, the Court administered all the evidence which is in the case file, by giving the litigants the opportunity to declare themselves about each evidence separately and all the evidence together starting from the expertise, compiled by expert R. B. [...]. At the end, none of the litigants challenged the evidence read”.*
13. The Applicant filed an appeal within legal deadline with the Court of Appeal against Judgment C. no. 482/2012 of the Basic Court, alleging, as a legal basis, the violation of the contested procedure provisions and erroneous determination of factual situation.
14. On 3 September 2014, the Court of Appeal rendered Judgment Ae. no. 161/2012, which rejected the Applicant's appeal as ungrounded, and upheld Judgment of the Basic Court, of 17 July 2013, in entirety.
15. In the reasoning of the Judgment, the Court of the Appeal stated: *„Deciding on the appeals of the respondent, the Court of Appeal of Kosovo found that the first instance court, by determining correctly and completely the factual situation, has correctly applied the contested procedure provisions and the substantive law, when it found that the statement of claim of the claimant is grounded. The reasoning of the judgment contains sufficient reasons for the decisive facts, valid for a fair trial of this legal matter, while it does not contain essential violations of the contested procedure, of which this Court, pursuant to Article 194, acts ex officio”.*
16. Within legal deadline, the Applicant filed a request for revision with the Supreme Court against the judgments of the lower instance courts, alleging as legal basis, the violation of the of contested procedure provisions and erroneous determination of factual situation.
17. On 18 March 2015, the Supreme Court rendered Judgment E. Rev. 64/2014, which rejected the Applicant's request for revision as ungrounded, with the reasoning: *„According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the contested procedure provisions and the substantive law, when it found that the appeals of the respondent are ungrounded and when it upheld the judgment of the first instance court. In the mentioned judgment, it gave sufficient reasons for the decisive facts, which are accepted also by this Court”.*
18. In addition, the Supreme Court specifically answered the Applicant's allegations that awarded compensation for his part in the company's shares was not appropriate. The Supreme Court stated:

“With regard to the allegations of the Revision regarding the real contribute of the litigants on the establishment of the enterprise, capital increase, current market price of the enterprise, based on which the division of the

enterprise is made, the Supreme Court considers that these facts have to do with the ascertainment of the factual situation, of which, based on Article 214, paragraph 2 of the LCP, the Revision cannot be filed. But, despite this, this Court considers that the issues raised by this allegation have been certified based on the financial expert report, which was not challenged by the parties during the proceeding.”

Applicant’s allegations

19. The Applicant stated in the Referral: *„Pursuant to the provision of Article 113, paragraph 7, as read in conjunction with Article 54 of the Constitution of the Republic of Kosovo, I file this Referral for protection of legality, since the challenged judgments were rendered in contradiction with the provision of the Law No.04/L-077 on Obligational Relationships /LOR/ of 10 January 2012....And all relevant evidence were not taken into account when it was decided on this legal matter”.*

20. The Applicant addresses the Court with the request:

„To declare the Referral admissible and to hold that the challenged judgments have been rendered by erroneous application of the substantive law, namely violation of the Law on Obligational Relationships, proposing to remand the case to the first instance court for reconsideration”.

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant’s Referral, the Court shall first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

22. 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.”

23. Article 48 of the Law also 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 public authority is subject to challenge”.

24. In this case, the Court refers to 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“.

25. Analyzing the Applicant's allegations regarding the violation of rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: ECHR), the Court notes that the Applicant built his constitutional complaint on the alleged violation of the contested procedure provisions, on erroneous determination of factual situation, and on the stance "*that the regular courts rendered judgments in contradiction with the Law on Obligational Relationships*," which pertains to the sphere and questions of legality and not of constitutionality.
26. In the present case, when it comes to the constitutional complaints indicating the erroneous determination of factual situation and erroneous application of the substantive law, the Court reiterates that it cannot substitute the assessment of regular courts by its assessment, because it is the duty of the regular courts to assess the presented evidence based on which they determine the facts relevant for the application of the substantive law.
27. Regarding the Applicant's allegations that in the proceedings the regular courts did not assess all the relevant facts and evidence in this legal matter, the Court points out that 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 European Court of Human Rights, *Suominen v. Finland*, Judgment of 1 July 2003).
28. Accordingly, the Court notes that the Supreme Court in its Judgment E. Rev. 64/2014 concluded that the first and second instance court correctly applied the provisions of the contested procedure provisions and the substantive law, and that both judgments contained sufficient decisive facts which the Supreme Court had admitted when deciding on the merits of the Applicant's request for revision.
29. The Court further notes that the Applicant in this constitutional complaint has also mentioned violation of Article 54 [Judicial Protection of Rights] of the Constitution; however, the Court is of the opinion that the Applicant when building the case, dealt more with issues of legality which fall within the prerogative of the regular courts, and that his allegations of violation of the constitutional rights guaranteed by Article 54 of the Constitution have remained inexplicable and insufficiently substantiated.
30. Therefore, the Court considers that the Applicant did not substantiate his claims, nor he submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see case no. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, the 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).

31. In sum, the Court considers that the requirements according to which the Applicant's complaint would be considered in terms of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, have not been met.
32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible pursuant to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 22 December 2015, 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 paragraph 4 of the Law; and
- IV. This Decision effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi