



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

Prishtina, 19 January 2015
Ref. no.:RK774/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI112/14

Applicant

Srboljub Krstić

**Request for constitutional review of the Decision of the Supreme Court
of Kosovo, Rev. no. 63/2014, of 3 April 2014**

**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 Applicant is Mr. Srboljub Krstić, village of Preoce, Municipality of Gračanica, who is represented by lawyer Mr. Isak Islami from Prishtina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. no. 63/2014, of 3 April 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision [Rev. no. 63/2014] of the Supreme Court of Kosovo, of 3 April 2014, by which according to the Applicant's allegation, was violated Article 3 (Equality Before the Law) of the Constitution of the Republic of Kosovo.

Legal basis

4. Article 113. 7 of the Constitution, Article 49 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 3 July 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 August 2014, the President of the Court by Decision no. GJR. KI112/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, President of the Court, by Decision no. KSH. KI112/14, appointed Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 29 September 2014, the Court notified the Applicant and the Supreme Court on the registration of Referral.
8. On 22 October 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

9. On 10 October 2012, the Applicant filed the claim with the Basic Court in Prishtina, Branch in Gračanica (hereinafter: the Basic Court) against Mr. A. N., residing in Smedereva, Republic of Srbija, by which he requested the confirmation of the property right over the parcel with surface area of 712 m², which is registered in the cadastre under the number P-73414058-00353-2.
10. The Applicant stated in his statement of claim that the value of the dispute in this legal matter is 300 (three hundred) euro.

11. On 15 July 2013, the Basic Court rendered the Decision [P. no. 2673/12] requesting from the Applicant to complete the Referral within 3 days upon the service of this Decision and to specify the accurate address of the respondent.
12. On 31 July 2013, the Basic Court rendered Decision [P. no. 2673/12] by which the Applicant's claim is considered withdrawn, pursuant to Article 102.3 and Article 112 of the Law on Contested Procedure (hereinafter: the LCP).
13. On the same date (31 July 2013), the Applicant filed an appeal with the Court of Appeal against the Decision of the Basic Court of 31 July 2013.
14. On 25 October 2013, the Court of Appeal rendered the Decision [Pž. no. 2882-2013], by which the Applicant's appeal was rejected as ungrounded and the Decision of the Basic Court [P. no. 2673/12] of 31 July 2013, was upheld in entirety. In the conclusion of the Decision, the Court of Appeal stated: „...*that the Applicant's appeal is not based on legal grounds, since by appealed reasons, the Applicant did not challenge the factual situation on which is based the first instance decision*”.
15. On 7 February 2014, the Applicant submitted the request for revision to the Supreme Court of Kosovo.
16. On 3 April 2014, the Supreme Court of Kosovo rendered the Decision [Rev. no. 63/2014], by which the Applicant's request for revision was rejected as inadmissible, pursuant to Article 211.3 of LCP.

Relevant law

Law on Contested Procedure (LCP) No. 03/L- 006

Article 102.3: *“It will be considered that the submission is withdrawn if not returned to the court within the specified period. If returned uncorrected or not supplemented, the submission shall be rejected.”*

Article 112: *“If the addressee, the adult member of his family, authorized person, the employee of the state body or legal person, refuses to accept the document without any legal justification, the person effecting the service shall leave the document at home or workplace of the addressee or attach it on the door of the home or workplace. The person effecting the service shall note on the receipt the date, hour and reason for refusal and the place where the document is left. Service is thereby effected.”*

Applicant's allegations

17. In the Referral, the Applicant stated that the challenged Decision [Rev. no. 63/2014], of the Supreme Court violated his constitutionally guaranteed rights, and that: Article 3 of the Constitution of the Republic of Kosovo, which provides that the Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

18. The Applicant addresses the Court with the following request:

“By this referral, we want to achieve the respect of law and avoidance of violations, by seeking the approval of the revision of 03.04.2014, of the Supreme Court of Kosovo, which is in contradiction with the requested revision and also in contradiction to legal rules, where based on the revision we have not presented the amount lower than 3000 euro. Therefore, the Supreme Court of Kosovo should have considered the request for the revision, filed within legal time limit and not to reject it by Decision 63/2014.”

Admissibility of Referral

19. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure of the Court.

20. 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.”

21. In the present case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if:
[...]
(c) the Referral is not manifestly ill-founded”.*

22. As stated above, the Applicant claims that the Decision of the Supreme Court of Kosovo [Rev. no. 63/2014], of 3 April 2014, violated his rights guaranteed by Article 3 (Equality before the Law) of the Constitution.

23. In this regard, the Court notes that the Applicant did not explain in his Referral how and why the Decision of the Supreme Court [Rev. no. 63/2014], violated his rights guaranteed by the Constitution, but he tried to justify his claims on alleged violations of Article 3 of the Constitution, by the stance: *„[...] that Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions. “*

24. The 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 regular courts to interpret and apply pertinent rules of procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

25. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
26. Moreover, the Court notes that the Supreme Court by Decision [Rev. no. 63/2014] of 3 April 2014 rejected the Applicant's request for revision, pursuant to Article 211.3 of LCP.
27. In this connection, the Court recalls that Article 211.3 of LCP provides: "*Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €.*"
28. Accordingly, the Court holds that the explanation given by the Supreme Court in Decision [Rev. no. 63/2014] is clear and legally grounded and that the proceedings before the Supreme Court and other regular courts were not unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR Decision of 30 June 2009).
29. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).
30. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has failed to prove that the challenged decision violates his rights guaranteed by the Constitution.
31. Therefore, the Referral is manifestly ill-founded and should be declared 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 22 October 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


Arta Rama Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani