



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

Prishtina, on 4 April 2016
Ref. No.: RK912/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI116/15

Applicant

Arbenita Ahmeti

**Constitutional Review of Judgment Rev. No. 151/2015,
of the Supreme Court of Kosovo, of 19 May 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Ms. Arbenita Ahmeti from Prishtina (hereinafter: the Applicant), represented by lawyer Xhevat Bici from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 151/2015 of the Supreme Court, of 19 May 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court of Kosovo. The Applicant considers that in the proceedings before the regular courts his rights were violated, as guaranteed by Articles 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03 / L-121 on 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 16 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 October 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 21 October 2015, the Court requested the Applicant to submit the power of attorney, authorizing the lawyer Xhevat Bici to represent her, and it informed the Supreme Court about the registration of the Referral.
8. On 29 October 2015, the Applicant submitted the signed power of attorney.
9. On 10 February 2016, after having reviewed the report of Judge Rapporteur the Review Panel, unanimously, proposed to the Court the inadmissibility of the Referral.

Summary of facts

10. On an unspecified date, the Applicant filed with the Basic Court in Prishtina - branch in Lipjan (hereinafter: the Basic Court) a statement of claim on division of property acquired during marriage.
11. On 28 February 2014, the Basic Court by Judgment C. no. 339/2012) partly approved the Applicant's statement of claim, and in the enacting clause decided as follows:

“I. The statement of claim of Claimant Arbenita Ahmeti from Prishtina IS APPROVED AS GROUNDED, and [the minor child] is entrusted with

custody, care and education to mother-Claimant Arbenita Ahmeti from Prishtina till the change of circumstance according to which it was decided by this Judgment.

II. The contact of the minor child with her father, Respondent Xh. P. from Sllovi village, IS DECIDED to be twice per month, every second and fourth Thursday of the month from 13,00 – 15,00 hrs and the second day during the religious and the official holidays as well during the birthday of the child at the corresponding time. In case of no possibility of maintaining the contact according to the aforementioned time scheduled, the same arrangement may be otherwise organized during the time the Respondent is in Kosovo. The contact shall be arranged in the Center for Social Welfare in Prishtina, “Kodra e Trimave” Unit and under the supervision of this center.

III. The clarified statement of claim of Claimant Arbenita Ahmeti IS APPROVED, and Respondent Xh. P. from Sllovi village, currently residing in Germany IS OBLIGED to provide alimony for [minor child], to pay the amount of 200€ per month, starting from the day of the trial 28.02.2014, until there are legal conditions for such undertaking and that not later than the 05th of the following month.

IV. The part of the statement of claim of Claimant Arbenita Ahmeti, whereby for the alimony she requested that Respondent pays the amount of 100 € per month, IS REJECTED as ungrounded due to the withdrawal of the Respondent from this part of the statement of claim.

V/a. The clarified statement of claim of the Claimant IS partially APPROVED, and Respondent Xh. P. is OBLIGED in relation to the Claimant Arbenita Ahmeti for personal things that the latter had ownership over the time creating the factual marital marriage which she had for personal use that remained with the Respondent in the event of breaking this marital union, so for that reason the Respondent should reimburse the Claimant the equal amount of money 7858.90. €, with the legal interest from the date of submitting the Claim 09.06.2011 until final payment as well as compensate the costs from the contested procedure in the amount of 1660. €, in term of 15 days from the date the Judgment is received, under the threat of forced execution.

V/b The other part of the statement of claim of the Claimant by which it is requested that the Respondent, Xh. P. for personal items which by the time of establishment the actual marriage were in her possession that served her for personal use and that they remained with the family of the Respondent when terminating this marriage to compensate the equal value of the adjudicated amount 29.093.10.-€ is REJECTED AS UNGROUNDED”.

12. The Applicant filed an appeal against items IV and V/b of the enacting clause of the Judgment (C no. 339/2012) of the Basic Court, with the proposal to modify the judgment in the challenged parts and to fully approve the statement of claim, or the same to be annulled and the case be remanded for retrial.
13. The respondent Xh. P. filed an appeal against the items I, II, III and V/a of the enacting clause of Judgment (C. no. 339/2012) of the Basic Court with a proposal to annul the judgment in those parts and to remand the case for retrial or to modify it so that the claimant’s statement of claim in the enacting clause

under items I, II, III and V/a be rejected in entirety and the enacting clause of judgment under items IV and V/b be upheld.

14. On 3 February 2015 the Court of Appeal of Kosovo, by Judgment (Ac. No. 1980/2014), rejected the appeals filed by the Applicant (the claimant) and by the respondent Xh. P. as ungrounded, and upheld the Judgment (C. no. 339/2012) of the Basic Court with a detailed reasoning of each appealed allegation.
15. The Applicant filed a request for revision against item V/b of the enacting clause of the judgment, by which the statement of claim regarding the personal items was rejected, with the proposal that the challenged part of the judgment be modified, so that the claimant's statement of claim would be approved for the amount of € 29,093.10.
16. On 19 May 2015, the Supreme Court of Kosovo in Prishtina (Judgment Rev. no. 151/2015) rejected as ungrounded the request for revision and upheld the Judgment (Ac. no. 1980/2014) of the Court of Appeal of Kosovo, with a detailed reasoning:

“The Supreme Court of Kosovo, accepted the reasoning of Judgments of the lower instance courts as fair and lawful, as the first instance court in order to determine the factual situation engaged the expert R. R, who based his opinion on the basis of material evidence, proof of witnesses, family visits of claimant and the respondent, made the identification of things and investigated the market regarding the prices, then based on all the data he found that the value of calculated things reaches the amount of 11.227 €. The Supreme Court of Kosovo reviewed the allegations of the claimant in regard to the expertise of Sh. B., but the same didn't have the power to decide differently as the claimant didn't object the expertise of the expert R. R. and neither she requested another expertise, therefore this Court, the allegation for revision that the substantive law is applied in an erroneous manner, finds as ungrounded...”

Applicant's allegations

17. The Applicant claims that in the proceedings before the regular courts her rights pursuant to Articles 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution have been violated.
18. The Applicant argues: *“... Articles 46 and 54 of the Constitution of Republic of Kosovo are violated, and Arbenita Ahmeti was denied of her right to personal property where for [minor child] the right to alimony from the day the parents got separated has not been approved, but only from the day it was decided”*.
19. The Applicant also requests *“... To review the legality of the Judgments as there was a violation of the right to personal property, which was solely property of the Claimant, because a part of it is her dowry, golden jewelry and the raiment, which is considered as a special property of the Claimant. Courts have not reviewed the objections of the Claimant to the value of the amount, the expert was assigned by the Court and the early expertise was not*

considered, and the expertise was not requested by the Claimant but the Court assigned it on its own. The alimony wasn't received from the day when father was obliged to pay, but it was set from the date the Court decided thus, she was damaged for years".

Assessment of the admissibility of the Referral

20. The Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and Rules of Procedure.

21. The Court 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".

22. Furthermore, the Court recalls Rule 36 (2) (b) and d) of the Rules of Procedure, which provides:

(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;

[...]

d) the Applicant does not sufficiently substantiate his claim;"

23. The Applicant basically alleges that the factual situation regarding the value of property is determined based on the findings of an expert engaged by the court, and that the regular courts have not taken into account the expertise, according to which the Applicant filed the claim, thereby violating Articles 46 and 54 of the Constitution in the proceedings before the regular courts, due to an incorrect application of the substantive and procedural law.

24. The Court notes that the Applicant presented these allegations also in the proceedings upon her request for revision before the Supreme Court. The Supreme Court gave a detailed reasoning on how it determined the factual situation.

25. The Applicant now for the first time in the proceedings before the Constitutional Court alleges that by the decisions of the regular courts *"...the [minor child] was denied the right to alimony from the date of separation of her parents, but only from the date it was decided."* These allegations have not previously been subject of dispute in the proceedings before the regular courts.

26. As stated above, the Court finds that the allegations presented by the Applicant are contrary to the documentation submitted by her to the Court.

27. The Court notes that during the proceedings, on the Applicant's proposal, the Court of Appeal granted her an interim measure, which "*obliged the respondent for alimony for the [minor child] to pay € 100 every month, whereas for the claimant Arbenita Ahmeti to pay the amount of € 60 until the completion of the procedure by a final decision ...*".
28. The Applicant challenges the way the factual situation was determined, and reasoned by the regular courts in three instances. However, this conclusion was reached by the regular courts, after detailed review of all the arguments presented by the Applicant.
29. The Applicant was given the opportunity at the various stages of the proceedings to present the arguments and evidence she considered relevant to her case. At the same time, she had the opportunity to challenge effectively the arguments and evidence presented by the responding party and to challenge the interpretation of the law, as erroneously interpreted by the Municipal Court, the Court of Appeal and the Supreme Court, in the regular court proceedings.
30. The Court considers that all of the Applicant's arguments, which were relevant to resolve the dispute, were heard properly and that they were duly considered by the courts, that the material and legal reasons for the decision which she challenges were submitted in details and that, following the above, the proceedings before the regular courts, seen as a whole, were fair (see case: *Bogusława KNIAT vs. Poland* ECHR, Decision No. 17064/06, of 11 December 2001).
31. The Court further 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 the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (see case: *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
32. Although the Applicant alleges that her rights were violated by erroneous determination of factual situation and erroneous application of the law by regular courts, she did not indicate how the abovementioned decisions violated her constitutional rights.
33. The Applicant has not proved that the relevant proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v Lithuania*, ECHR Decision on Admissibility No. 17064/06, of 30 June 2009).
34. The Court considers that the admissibility requirements have not been met. The Applicant failed to present and support the claims that the challenged decision violated her constitutional rights and freedoms.
35. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (2) (b) and d) of the Rules of Procedure.

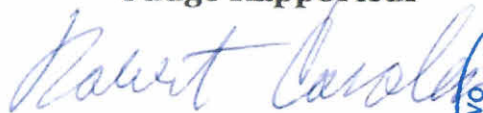
FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) and d) of the Rules of Procedure, on 10 February 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;
- IV. TO DECLARE this Decision effective immediately;

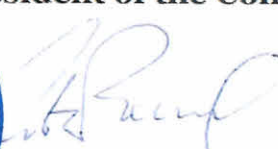
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Anisa Rama-Hajrizi