



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

Prishtina, 29 December 2014
Ref. No.:RK 742/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI126/14

Applicant

Vebi Tahiri

**Constitutional review of the
Decision Ac. no. 2109/2013, of the Court of Appeal,
of 16 December 2013**

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 Referral was submitted by Mr. Vebi Tahiri (hereinafter: the Applicant), residing in Gjilan.

Challenged decision

2. The challenged decision is Decision Ac. no. 2109/2013, of the Court of Appeal, of 16 December 2013, which the Applicant claims he received on 12 February 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision, Ac. no. 2109/2013 of the Court of Appeal, of 16 December 2013, by which the Applicant's appeal was rejected as ungrounded and the Decision (E. no. 153/2011, of 10 June 2013) of the Basic Court in Gjilan was upheld. The Applicant alleges that the abovementioned Decision of the Court of Appeal has violated his right guaranteed by Article 46 [Protection of Property] 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 on 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 4 August 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 September 2014 the Court informed the Applicant on registration of the Referral. On the same date, the Court submitted a copy of the Referral to the Court of Appeal.
7. On 5 September 2014 by Decision GJR. KI126/14, the President of the Court appointed Arta Rama-Hajrizi as Judge Rapporteur. On the same date, by Decision KSH. KI126/14, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 9 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

9. On 11 May 2007, the Applicant and ProCredit Bank, the branch in Gjilan (hereinafter: the creditor) have concluded a loan agreement. The mortgage agreement over the Applicant's immovable property and the pledge agreement were registered in the Cadastral Office of the Municipality of Gjilan.
10. As a result of the non-payment of debt, the creditor filed a proposal for execution and consequently by Decision of the Municipal Court in Gjilan (E. no.

153/2011, of 23 February 2011) with a purpose of the payment of debt, the sale of the mortgaged immovable property of the Applicant was scheduled.

11. On 6 March 2013, the Basic Court in Gjilan rendered the Conclusion (E. no. 153/2011) on the first public sale of the Applicant's mortgaged immovable property. After the failure of the first public auction sale, the Basic Court in Gjilan scheduled the second public sale of the immovable property, which was held on 7 June 2013.
12. On 10 June 2013, the Basic Court in Gjilan (Decision, E. no. 153/2011) assigned the creditor as the most advantageous bidder offering the highest price for purchase of the mortgaged immovable property and ordered that the immovable property is registered in the name of the creditor.
13. The Applicant filed an appeal with the Court of Appeal against the Decision of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013), by proposing the court to quash the appealed decision and remand the matter to the first instance court for reconsideration.
14. On 16 December 2013, the Court of Appeal (Judgment, Ac. nr. 2109/13) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013).
15. On 19 February 2014, the Directorate of the Geodesy and Cadastre in Gjilan rendered the Decision on registration of the immovable property in the name of the creditor, ProCredit Bank.

Applicant's allegations

16. As mentioned above, the Applicant argues that the challenged Decision violated his right guaranteed by Article 46 [Protection of Property] of the Constitution.
17. The Applicant also alleges that in the challenged Decision, Article 18 paragraphs 1, 2 and 3 of the Law of Contracts and Torts (published in the Official Gazette of SFRY, No. 29/78 with amendments and supplements of the Law, published in the Official Gazette of SFRY No. 39) was erroneously applied. In this respect, the Applicant states that *"It is not that they did not act in spirit of these provisions when it comes to this case. At contrary, with or without an intention, the debtor was put in difficult position due to creditor's actions (three debtor's parcels although having a real overall value of € 695,010, were bought by the creditor for the amount of only €232,000 and after 4 months only, the creditor sold one of them in the amount of €260,000. This illustrates the action of the creditor against the debtor..."*
18. The Applicant concludes by requesting the Court to annul the Decisions of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013) and that of the Court of Appeal (Ac. no. 2109/2013, of 16 December 2013).

Assessment of admissibility of the Referral

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

20. In this respect, 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

21. The Court also takes into account Rule 36 (1), (c) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

[...]

(c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...]”

22. To determine whether the Applicant has submitted the Referral within the provided time limit of four months, the Court refers to the date when the final decision was served on the Applicant and the date on which the Referral was submitted to the Constitutional Court.

23. The Applicant declares in his Referral that the Decision of the Court of Appeal (Ac. no. 2109/2013, of 16 December 2013) was served on him on 12 February 2014, while he submitted his Referral to the Court on 4 August 2014. Based on this, it follows that the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c).

24. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases, raising issues under the Constitution, are dealt within a reasonable time and that the past decisions are not continually open to challenge (See case *O’Loughlin and others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

25. Therefore, the Referral should be declared inadmissible because out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1), (c) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Arta Rama-Hajrizi



President of the Constitutional Court



Prof. Dr. Enver Hasani