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

Pristina, 20 January 2014
Ref.no.:RK537/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI128/13

Applicants

Shukri Maxhuni and Arian Bytyqi

Constitutional Review of the Judgment of the Supreme Court of Kosovo Rev. No. 365/2012 of 18 April 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicants are Shukri Maxhuni and Arian Bytyqi from Prishtina, who are represented by lawyer Mr. Ibrahim Dobruna from Gllogovc.

Challenged decision

2. The Applicants challenge the Judgment of the Supreme Court of Kosovo Rev. No. 362/2012 of 18 April 2013, which rejected the revision of the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2011 regarding the release and delivery into possession of the apartments.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo Rev. No. 362/2012 of 18 April 2013, and the issue whether by the abovementioned judgment were violated the Applicants' constitutional rights, guaranteed by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 27 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, (hereinafter: the Law) and Rules 28 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 16 August 2013, the Applicants, respectively the legal representative, submitted by mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 27 August 2013, the President, by Decision no. GJR. KI 128/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision no. KSH. KI 128/13, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 5 September 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the procedure for constitutional review of the judgments in Case no. KI 128/13 had been initiated.

8. On 16 October 2013, after having reviewed the report of the Judge Altay Suroy, the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani, made a recommendation to the full Court on inadmissibility of the Referral.

9. At the same time, the Review Panel recommended to the full Court to reject the Applicant's request for interim measures, on the grounds that he failed to provide any convincing evidence to justify the imposition of the interim measures as necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.

Summary of facts

10. According to the Applicant's claims, in 1999, after the war in Kosovo, humanitarian housing in apartments was awarded to them: Shukri Maxhuni (hereinafter: the Applicant) was provided apartment no. 17, III floor, entrance IV building no. 9/4 neighborhood "Çezma e Bardhë" (Dardania) and Arian Bytyqi (hereinafter: the Applicant) was provided apartment no. 18, III floor, entrance IV building no. 9/4 neighborhood "Çezma e Bardhë" (Dardania) with a purpose of temporary shelter, since they did not have any shelter. The apartments were in rough construction phase, so that the Applicants had certain financial expenses associated with the adaptation of the apartments for normal living.

11. On 29 November 2005, the Public Housing Enterprise in Prishtina (hereinafter: the PHE) initiated a claim for release of the apartment from people and households against the Applicant and other persons. The Applicants, according to the PHE allegations, used the apartments without legal ground and they were not ready to release them. According to PHE allegations, the same was declared as an investor on the abovementioned apartments, which, because of the use of the apartments by the Applicants and other persons, could not perform construction works provided by the contract on construction.

12. On 28 March 2007, the Kosovo Property Agency (hereinafter: KPA) informed the Applicants that it is considering to place the contested apartments under the administration of KPA and that the Applicants may address the KPA within legal time limit.

13. On 17 July 2007, the KPA, pursuant to the decision of the property claim commission in Kosovo, issued the eviction order to the Applicants to leave the abovementioned apartments, because the contested apartments were not qualified as apartments for further humanitarian shelter.

14. On 2 August 2007, then Prime Minister of Kosovo, addressed the letter to KPA and PHE, with a proposal to temporarily suspend the eviction order against 136 families in the residential complex "Bela česma" (Dardania), 84 families in "Ulpiana," and in "Sunny Hill" against families in difficult financial situation and serious social and humanitarian cases.

15. On 22 September 2008, the Municipal Court in Prishtina, by Judgment C.no. 2326/05 approved as grounded the statement of claim of the PHE and obliged the Applicants to release people and households from the abovementioned contested apartments.

16. On 22 October 2008, the Applicants filed an appeal to the District Court in Prishtina against the Judgment of the Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, due to (according to the Applicant's allegations), substantial procedural violation of the provisions of LCP,

erroneous and incomplete determination of the factual situation and decision on release of apartments.

17. On 05 September 2011, the Applicants filed an amendment to the appeal with the District Court, where among others, mentioned the fact that some documents from the case file of case C.no.2326/05 of 22 September 2008, were submitted in Serbian, which is not their native language, and is a language that they do not understand.

18. On 30 December 2011, the District Court in Prishtina by Judgment Ac.no.1492/2008 rejected as ungrounded the Applicants' appeal and upheld the Judgment of the Municipal Court in Prishtina C.no. 2326/05 of 22 September 2008.

19. On 13 March 2012, the Applicants filed revision in the Supreme Court of Kosovo against the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2012 and Judgment of Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, due to (according to Applicant's allegations), substantial violation of the contested procedure provisions and erroneous application of the substantive law, with a proposal that the aforementioned judgments of the Municipal and District Court in Prishtina to be annulled and the case be remanded for retrial to the first instance court.

20. On 18 April 2013, the Supreme Court of Kosovo, by Judgment Rev.no. 365/2012 rejected as ungrounded the Applicant's revision against the Judgment of the District Court in Prishtina Ac.no.1492/2008 of 30 December 2012 and Judgment of Municipal Court in Prishtina C.no.2326/05 of 22 September 2008, holding that:

> *"Supreme Court of Kosovo finds the legal stance and reasoning of the lower instance courts as fair and lawful, in relation to the approval of the statement of claim and rejection of the respondents' appeal, since sufficient and convincing reasons, also acceptable to this court, have been provided from the fact that the approval of the claimant's statement of claim is fair and lawful, since it has been confirmed that the claimant as investor has the property right over the contested apartments."*

Applicant's allegations

21. The Applicants allege that:

> *"the first and the second instance courts and finally the Supreme Court of Kosovo by rendering the Judgment Rev.no.365/2012 of 18 April 2013, have committed substantial and multiple violation of the provisions of the Constitution of the Republic of Kosovo, Law on Contested Procedure, European Convention on Human Rights as well as the Law on Use of Languages, at the moment when submitted the documents to the Applicants: Ruling on urban permit of 26.01.1996, Ruling of 14.12.1995, Ruling of 15.11.1995 and Contract on construction of 16.12.1995, Contract on investments, in Serbian language-namely in non-native language, without translation of the Contract on construction no.02.2932/1, of*

06.12.1995, from Serbian into Albanian language, the language which the parties understand, from Serbian into Albanian language. This is substantial violation and its consequence is the annulment of the Judgment and is fully contrary to the requirements, provided by the Constitution of Kosovo and the European Convention on Human Rights.

Relevant legal provisions concerning contested procedure

22. ***LAW ON CONTESTED PROCEDURE no. 03/L- 006***

Article 96

96.1 The party and other participants in the procedure have the right to speak in front of the court their own language or the language they understand.
96.2 If the procedure is not conducted in the language of the party or other participants in the procedure, upon their request shall be provided verbal interpretation into their language or language they understand of all submissions and evidences and of all that is submitted in the court session.

Request for interim measure

23. The Applicants have also requested from the Court to impose interim measure:

"GRANTS the interim measure until the time Supreme Court of Kosovo reconsider the matter as per ratio decidendi of the Constitutional Court."

24. In this respect, the Court is referred to Article 116.2 [Legal Effect of Decisions] of the Constitution which establishes:

"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages".

25. The Court also takes into account Article 27 of the Law, which provides:

"The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest."

26. Furthermore, Rule 54.1 of the Rules of Procedure, provides:

"At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures."

27. Finally, the Rule 55.1 of the Rules of Procedure, provides:

"A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals."

28. Moreover, in order for the Court to grant interim measures pursuant to Rule 55.4 of the Rules of Procedure, it must find that:

" (a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and

(c) the interim measures are in the public interest.

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."

Assessment of the admissibility of the Referral

29. In order to be able to adjudicate the Applicant's Referral, the Court should first determine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

30. In the present case, the Court is referred to Article 113 [Jurisdiction and authorized parties] which provides:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. (...)

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law."

31. Article 47(2) of the Law on the Court, also provides:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

32. The Court also 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."

33. Furthermore, the Rule 36 (1) a), (b) and (c) of the Rules of Procedures, provides:

"(1) The Court may only deal with Referrals if:

(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or

(b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

(c) the Referral is not manifestly ill-founded."

34. The Court considers that the Applicant has met the prescribed time limit of four months from the date when he was served the Judgment of the Supreme Court; From the case file it can be clearly noted that the Judgment of the Supreme Court Rev.365/2012 was rendered on 18 April 2013, whereas the Applicant submitted the Referral through mail on 16 August 2013, which means that the Referral has been submitted within the four month time limit as prescribed by Law and Rules of Procedures.

35. The Applicant mainly alleges that the judgment of the first instance and the second instance court, as well as the Judgment of the Supreme Court violated his constitutional rights guaranteed by Article 31 of the Constitution, as well as Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

36. The Applicant also alleges that his rights were violated:

"... at the moment when to the Applicants were submitted certain documents in the Serbian language-namely in their non-native language and by not translating these documents from Serbian into Albanian language and it resulted in the substantial violation of the Constitution of Kosovo and the European Convention on Human Rights..."

37. From the legal provisions cited above of the Law on Contested Procedure no. 03/L-006 of 30 June 2008, Article 96.2 is clearly seen that:

"If the procedure is not conducted in the language of the party or other participants in the procedure, upon their request shall be provided verbal interpretation into their language or language they understand of all submissions and evidences and of all that is submitted in the court session."
Having examined the documents submitted to the Court, it is evident that the Applicants have not submitted a request for translation of the contested documents at any stage of the proceedings before the regular courts, as provided in the abovementioned Law on contested procedure. Therefore the Court finds that the Applicants have not exercised their legal right, as guaranteed by law, to ensure translation of documents in the proceedings. The Court did not find that the respective proceedings were in any way unfair or tainted by arbitrariness (see, Resolution on Inadmissibility, *Beqiri against decision no. 50116335 of the Ministry of Labor and Social Welfare KI 10/09, 25 January 2010)* Decision of Constitutional Court of Kosovo.

38. The Court further notes that the judgment of the first and second instance courts, as well as the Judgment of the Supreme Court are reasoned and this Court did not notice that there were any procedural violations during the

process of trial of this case, which would result in violation of fundamental rights of the Applicants, guaranteed by the Constitution. The Applicant was afforded ample opportunities for defense during the entire process of trial in this case.

39. The Court considers that the Applicant has not substantiated and supported with evidence the alleged violation of his rights by the first and second instance court as well as by the Supreme Court.

40. In fact, the Applicant's allegation for violation of constitutional rights does not present *prima facie* sufficient ground for filing a case with the Court; the Applicant's dissatisfaction with decisions of the regular courts cannot be a constitutional ground to complain before the Constitutional Court.

41. Furthermore, the Court notes that, for a *prima facie* case on meeting the admissibility requirements of the Referral, the Applicant must show that the proceedings before the first and second instance court and the Supreme Court, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial, or that other violations of constitutional rights might have been committed by the regular courts during the trial.

42. In this respect, the Court recalls Rule 36 (2) a) of the Rules of Procedure which provides that *"The Court shall reject a referral as being manifestly ill-founded when it is satisfied that: a) the Referral is not prima facie justified.*

43. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

44. Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECtHR] 1999-I).

45. However, the Applicant does not explain why and how his rights were violated, he does not substantiate a *prima facie* claim on constitutional grounds and did not provide evidence showing how his rights and freedoms, guaranteed by Article 31 of the Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, had been violated by the regular courts.

46. The Court does not consider that the relevant proceedings in the first and second instance and in the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

47. In fact, the Applicant did not show *prima facie* why and how the first and the second instance and the Supreme Court violated his rights as guaranteed by

Articles 31 of the Constitution of Kosovo and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

48. The Court concludes that the Applicant has neither built nor shown a *prima facie* case either on the merits or on the admissibility of the Referral.

49. Therefore, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

50. The Court further concludes that, as the Applicant's Referral is inadmissible, the request for interim measures is moot and thus must be rejected.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 27 and 48 of the Law, and Rules 36 (2) a) and 56 of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO REJECT the request for imposing interim measures;

III. This Decision shall be notified to the Parties and it shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Altay Suroy | Prof. Dr. Enver Hasani