



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

Prishtina, 2 June 2017
Ref. No.:RK 1075/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI141/15

Applicant

Hajdar Podrimja

**Request for constitutional review of Judgment ARJ-UZVP No.
29/2015 of the Supreme Court of 29 October 2015**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Hajdar Podrimja from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment ARJ-UZVP No. 29/2015 of the Supreme Court of 29 October 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court which allegedly violated the Applicants' rights guaranteed by Article 21 (General Principles), Article 22 (Direct Applicability of International Agreements and Instruments), Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a fair trial) of the European Convention of Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 49 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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 30 November 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 December 2015, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama Hajrizi.
7. On 29 December 2015, the Court notified the Applicant and the Supreme Court about the registration of the Referral.
8. On 18 April 2017 the President of the Court appointed Judge Snezhana Botusharova as presiding of the Review Panel, replacing Judge Robert Carolan who had resigned on 9 September 2016.
9. On 2 May 2017, the Review Panel, after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. Based on the case file the Court notes that in 1969 the parcel no. 197 of the legal predecessor of the Applicant in the surface area of 1.59,76 ha was nationalized.
11. In 1969, the legal predecessor of the Applicant due to the nationalization of the disputed parcel initiated the court proceedings which ended on 25 October 1970 by Judgment Ac. No. 647/69 of the District Court in Prizren.

12. That judgment rejected the objection of the legal predecessor of the Applicant and gave the opportunity to the third party Z.T. that as a party that participated in the process of nationalization, registers the property in the cadastre in his name.
13. On 1 September 1986, the commission for nationalization of the Municipality of Rahovec rendered decision No. 461-41 in which Z.T. was registered as the owner of the disputed parcel.
14. In 2010, the Applicant submitted a request to the commission for land regulation in the Municipality of Ferizaj in which he requested the registration of the concerned property in his name, claiming that the registration of the property under the name of Z.T., is disputable, because it was a result of the concealing fact that there is a Judgment Cml-No. 21/71 of the Supreme Court of 28 October 1971, by which Judgment Ac. No. 647/69 of the District Court was annulled.
15. On 26 July 2010, the commission for land regulation of the Municipal Assembly of Rahovec rendered Decision No. 461-16/2010, which approved the Applicant's request and declared partially invalid the Decision on the nationalization of land of the Municipality of Rahovec No. 461-41 of 1 September 1986, which refers to the part of cadastral parcel 197.
16. On 25 August, 2010, the third party Z.T. filed an appeal with the Ministry of Agriculture, Forestry and Rural Development (hereinafter MAFRD) against the decision of the commission for land regulation of the Municipal Assembly of Rahovec of 26 July 2010.
17. On 8 October 2010, the MAFRD sent to the appellant Z.T. the reply SP - 2227/210, emphasizing that MAFRD *has no subject matter jurisdiction to act upon the appeal filed by him.*"
18. On 8 November 2010, Z.T., by the claim with the Basic Court in Prishtina, the Department of Administrative Affairs (hereinafter: the Basic Court), initiated the administrative dispute for annulment of the act/reply to the appeal of the MAFRD, No. SP -2227/210 of 8 October 2010.
19. On 22 January 2015, the Basic Court rendered Judgment A. No. 1076/2010, which approved the claim of Z.T., and annulled the reply to appeal of the MAFRD, and also ordered the MAFRD that within 30 days from the day the Judgment becomes final renders a decision on the appeal of the claimant of 25 August 2010, filed against Decision No. 461-16/2010 of the commission for the land regulation of the Municipal Assembly of Rahovec.
20. The Applicant, as an interested party in the proceedings, filed an appeal with the Court of Appeal against Judgment A. No. 1076/2010 of the Basic Court, in which he requested that the claim of Z.T. (claimant) be rejected as inadmissible.
21. On 11 June 2015, the Court of Appeal rendered Judgment AA. No. 120/2015 which rejected the Applicant's appeal as ungrounded. The reasoning of the Judgment, *inter alia*, reads: "*The responding authority (MAFRD) should have*

decided according to aforementioned legal basis, within 30 days from the date of submission of the appeal as provided for by Article 131.1 of LAP, with the decision, as provided for in Articles 84, 85 and 86 of the LAP, which decision should have its content, factual summary, decision-making method, the legal basis upon which the act is based and the reasoning giving full and clear reasons and instructions for appeal.”

22. The Applicant submitted to the Supreme Court a request for extraordinary review of the judgment of the Court of Appeal on the grounds of violation of the substantive law, with a proposal that the request be approved, the judgments be modified and the claim of the claimant be rejected as inadmissible.
23. On 29 October 2015, the Supreme Court rendered Judgment ARJ-UZVP. No. 29/2015 which rejected the request for extraordinary review of the decision of the interested party (the Applicant) as ungrounded. The reasoning of the Judgment, *inter alia*, reads:

“The responding authority (MAFRD) was obliged to decide on the claimant’s appeal, pursuant to provisions of the Law on Local Self-Government (Articles 74-85) No. 03/L-040, where the competences of the ministry for the implementation of the review of legality of the acts at the local level are determined, therefore the non-adoption of the decision on the request of the claimant constitutes an avoidance of legal obligations by MAFRD.”

Applicant's allegations

24. The Applicant stated in the Referral that the Supreme Court by unlawful and unconstitutional proceedings rejected his request for extraordinary review of the judgments of the regular courts, thereby violating his fundamental rights and freedoms, as provided by Article 21 (General Principles), Article 22 (Direct Applicability of International Agreements And Instruments), Article 31 (Right to Fair and Impartial Trial) of the Constitution and Article 6 of the ECHR.
25. The Applicant addresses the Court with the request: *“to annul Judgment APK-UYVP.no.29/2015, of the Supreme Court of Kosovo, of 29.10.2015, as well as Judgment AA.no.120/2015, of the Court of Appeal of Kosovo of 11.06.2015, and Judgment A.no.1076/2010, of the Basic Court in Prishtina, Administrative Matters Department, dated 22.01.2015.”*

Admissibility of the Referral

26. In order to be able to adjudicate the Applicant’s complaint, the Court should first examine whether the complaint has met the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
27. In this respect, Article 113 paragraph 7 of the Constitution establishes:

“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.”

28. In addition, Article 48 of the Law 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.“

29. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which foresees that:

“(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) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”

30. The Court, by analyzing the Applicant’s allegations of violation of the rights and freedoms guaranteed by the Constitution as well as ECHR, found that the Applicant built his claim on the allegations that the alleged violations occurred because *the Supreme Court did not approve his request for extraordinary review of the court decisions he had submitted as an interested party to the proceedings.*”

31. The Court indicates that the Applicant's allegation of violation of the constitutional rights which he refers to are related to the decisions of the courts in the proceedings in which the procedural admissibility of the claim filed by the third party Z.T. against MAFRD was decided.

32. Accordingly, the Court notes that the regular courts during the regular proceedings took into account all the Applicant's allegations when assessing the grounds of his Referral, which can be seen also on the basis of their decisions.

33. The Court further notes that in the proceedings before the regular courts only the procedural admissibility of the claim in question against the MAFRD was established and that in that proceedings the Applicant's “civil rights”, or his “obligations” were not in any way decided.

34. Accordingly, the outcome of the proceeding in which the challenged decisions were rendered, were not decisive for determining the civil rights and obligations of the Applicant.

35. Therefore, the Court based on the reasoning given by the regular courts does not see the arbitrariness; Moreover, the Court notes that the Court of Appeal and the Supreme Court assessed the allegations which the Applicant filed in his requests, and gave clear conclusions as to why these allegations were ungrounded.
36. In sum, the Court notes that in the conducted proceedings there are no facts or circumstances that would in any way indicate that, in the proceedings before the Supreme Court were violated the Applicant's human rights or freedoms guaranteed by the Constitution or the ECHR.
37. The Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating violation of his rights guaranteed by the Constitution and the ECHR (See, case No. KI19/14 and KI21/14 Applicants *Tafil Qorri and Mehdi Sylja*, 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).
38. The Court considers the requirements according to which the Applicant's complaint would be considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, have not been met.
39. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 2 May 2017, 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 paragraph 4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Vjosa Rama-Hajrizi