



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

Prishtina, on 27 October 2016
Ref. No.: RK983/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI149/15

Applicants

Savo Lekić, Dimitrije Lekić and Branislav Lekić

**Constitutional review of Decision Rev. no. 148/2014,
of the Supreme Court of Kosovo, of 2 June 2015**

THE 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, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Savo Lekić, Mr. Dimitrije Lekić and Mr. Branislav Lekić (hereinafter: the Applicants), who are represented by Mr. Živojin Jokanović, lawyer from Prishtina.

Challenged decision

2. The Applicants request constitutional review of Decision Rev. no. 148/2014, of the Supreme Court, of 2 June 2015.
3. The challenged decision was served on the Applicants on 31 August 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicants' rights guaranteed by Articles 3 [Equality Before the Law], 24 [Equality Before the Law] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 22 December 2015, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 22 January 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 29 February 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 14 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of facts

10. The Applicants are relatives: their grandfather while he was alive, more precisely in 1946, prepared a contract on division and allocation of the property, by which he allocated the immovable property to his sons (that is, to the legal predecessors of the Applicants) in a manner provided by the abovementioned contract on division and allocation.
11. On 11 September 1947, by Judgment [K. no. 570/47] of the District Court in Prishtina the movable and immovable property of the Applicants' grandfather, which was the subject of the Contract of the division and allocation, was confiscated.

12. With the entry into force of the Law on Property Restitution, the immovable property confiscated by Judgment [K. no. 570/47] of the District Court in Prishtina was restituted to the legal heirs, as provided by the Contract on the division and allocation of 1946. Since, in the meantime the owner of the confiscated immovable property (Applicants' grandfather) passed away, in 1995, before the Municipal Court in Prishtina the Applicants filed a request for confirmation of property rights on the basis of inheritance over the immovable property confiscated by Judgment [K. no. 570/47] of the District Court in Prishtina, without taking into account the Contract on division and allocation of 1946, because that contract provided that the legal predecessor of the Applicants would be entitled a smaller part than other heirs.
13. On 23 April 1997, the Municipal Court in Prishtina, by Judgment [P. no. 1595/95] found that the challenged immovable property, although registered in the cadastral books under the name of the Applicants' legal predecessor at the time of confiscation, it does not represent his exclusive property, since the challenged immovable property by the Contract on division of 1946 was distributed to his sons.
14. On 5 December 1998, the District Court in Prishtina, by Judgment [Gž. no. 901/98] upheld the Judgment of the Municipal Court in Prishtina.
15. On an unspecified date in 2005, the Applicants filed a claim for confirmation of ownership over the legacy of the Applicants' legal predecessor before the Municipal Court in Prishtina.
16. The Municipal Court in Prishtina [Decision C. no. 209/2009] rejected the Applicants' claim as inadmissible because it has already adjudicated this matter [Judgment P. no. 1595/95 of 23 April 1997] of the Municipal Court in Prishtina. The District Court in Prishtina [Decision GZ. no. 508/2009] upheld the decision of the Municipal Court.
17. On 12 March 2009, the Applicants filed again a claim with the Municipal Court in Prishtina. The Municipal Court in Prishtina [Decision P. no. 521/09] rejected the Applicants' claim as inadmissible because it has established that it was about the final adjudicated matter.
18. On 15 October 2014, the Court of Appeal [Decision Gž. no. 4750/2012] upheld the decision of the Municipal Court in Prishtina.
19. On 2 June 2015, the Supreme Court [Decision Rev. no. 148/2015] upheld the decisions of the lower instance courts that this matter has already been decided by Judgment [P. no. 1595/95] of the Municipal Court in Prishtina, of 23 April 1997.

"[...] The allegations in the revision on existence of two legal grounds, namely two different disputes, are inaccurate, the first one where the claimants request the confirmation of the property rights based on inheritance, and pursuant to certificate of the property right UL-71914058-0025 CZ Preoce, which is run under the name of the deceased Nikola Lekic, from Village Preoce, whereas the second

dispute based on final judgment of the legal predecessor of the claimants who requested the confirmation of the property rights over the disputed parcels based on inheritance, over the 1/5 of ideal part of the abovementioned immovable property. It is a fact that it is about the same legal ground, namely about the confirmation of the property rights based on inheritance [...]

The positions of the lower instance courts, that it is about final adjudicated matter, are clear and concise [...]. ”

Applicant's allegations

20. The Applicants allege that the challenged decision is contrary to Articles 3 [Equality Before the Law], 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution.

21. The Applicants also allege:

“The essence of the Referral is the assessment of the constitutionality and legality of the challenged decision, as final, so that the Court determines and approves the Referral, holds the violation of the Constitution and the law, and that the Applicants’ right was violated on their detriment, guaranteed by the Constitution of the Republic of Kosovo, that: the Supreme Court of Kosovo and both lower instance courts violated the rights of the claimants, and based their decisions on legally ungrounded position and understanding.”

22. The Applicants further allege:

“Therefore, we consider that regardless whether it is about the same immovable property, it is about different legal basis. In the first one-the adjudicated matter, it was requested the property over some parts of the property, whereas in the present case, it is requested that based on indisputable evidence and facts, indisputable legal situation, is determined by judgment that the restituted land constitutes the inheritance of the deceased Nikola Lekic, from Preoce.”

23. The Applicants request the Court:

“[...] that the property which was confiscated from their legal predecessor, and which has now been restituted, is returned to the inheritance, of the now deceased Nikola Lekic, in his heritage, whereas the question of the right over that property to be solved in the prescribed proceedings.”

Admissibility of the Referral

24. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. The Court refers to Article 113.7 of the Constitution which 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."

26. The Court also mentions Article 48 of the Law, which states:

"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."

27. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

"(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) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or..."

[...]

(d) the Applicant does not sufficiently substantiate his claim."

28. The Court recalls that the Applicants allege that the Judgment of the Supreme Court and the judgments of the regular courts violate their right to equality before the law and protection of property.
29. The Court notes that the Applicants did not provide any procedural or substantive reasoning in their Referral. They only mention some articles of the Constitution, without further explaining how the alleged violation occurred.
30. The fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
31. The Court also notes that the Supreme Court rejected the Applicants' request for revision and upheld the reasoning of the Court of Appeal and of the Basic Court.
32. In addition, the Court notes that the Supreme Court reviewed each Applicants' allegation, explaining in detail why the Applicants' request for revision is to be rejected as ungrounded and the judgment of the lower court be upheld.
33. Based on the case file, the Court found that the Judgment of the Supreme Court did not violate the rights guaranteed by the Constitution, as alleged by the Applicants.

34. As to the Applicants' request for assessment of the legality of the challenged decision, the Court emphasizes that it is not its tasks to deal with errors of facts or law (legality), allegedly committed by the regular courts or public authorities, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).
35. The Court further reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or by other public authorities. It is the role of the regular courts or of other public authorities to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*: *Garcia Ruiz v. Spain*, No. 30544/96, para.28, ECHR, Judgment of 21 January 1999, paragraph 28).
36. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants have had a fair trial (see: *inter alia*: *Edwards v. United Kingdom*, App. No. 13071/87, Report of the Eur. Commission of Human Rights in the case adopted on 10 July 1991).
37. The Court further considers that the proceedings before the regular courts, including the Supreme Court, have not been unfair or arbitrary. (See: *mutatis mutandis*, *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
38. The Court notes that the Applicants have not provided any *prima facie* evidence which would point out to a violation of their constitutional rights (see *Vanek vs. Slovak Republic*, no. 53363/99, ECHR, Decision, of 31 May 2005) and have not specified how the abovementioned articles of the Constitution substantiate their allegation in accordance with Article 113.7 of the Constitution and Article 48 of the Law.
39. In sum, the Court concludes that the Applicants' allegations of violation of their rights and freedoms have not been substantiated and proven. Therefore, their Referral is to be declared inadmissible, as manifestly ill-founded.
40. Therefore, the Referral is manifestly ill-founded and inadmissible in accordance with the Constitution and with Rules 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d) the Rules of Procedure, in the session held on 14 September 2016, unanimously

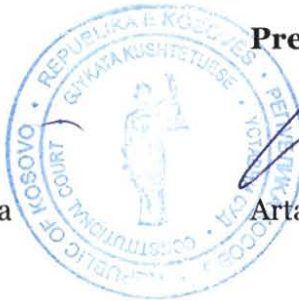
DECIDES

- 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. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi