



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

Pristina, 27 October 2016
Ref. No.:RK984/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI151/15

Applicants

Ol. S. and Olt. S.

**Constitutional Review of Judgment Rev. No. 186/2015
of the Supreme Court, dated 6 July 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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

The Applicant

1. The Referral was submitted by minors Ol. S. and Olt. S., from Gjilan (hereinafter: the Applicants). The Applicants are represented by lawyers Mexhid Syla and Blerim Syla, based on the power of attorney given to the lawyers by the Applicants' father.

Challenged decision

2. The Applicants challenge Judgment Rev. No. 186/2015 of the Supreme Court of 6 July 2015, which was served on the Applicants on 26 August 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 [Right to a fair trial] and Article 1 of Protocol 1 [Protection of Property] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the 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 20 December 2015, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 27 January 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 1 February 2016, the Court notified the Applicants of the registration of the Referral and requested their legal representatives of the Applicants to specify the Referral.
8. At the same time, the Court requested the Applicants to submit a copy of the letter of the receipt, which shows when the Applicants was served with the Judgment Rev. No. 186/2015, of the Supreme Court, of 6 July 2015.
9. On 9 February 2016, the Applicants submitted to the Court the requested information confirming that the Applicants were the minors Ol. S. and Olt. S.
10. In addition, the Applicants submitted a copy of the letter of the receipt showing that they were served with the aforementioned Judgment on 26 August 2015.
11. On 12 February 2016 the Court sent a copy of the Referral to the Supreme Court.

12. On 15 September 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On 30 August 2010, the Applicants were travelling in the vehicle together with their parents and their brother.
14. In the highway Durrës-Kukës in Albania, an accident happened due to a burst tire of their vehicle, which then hit another vehicle parked near the road.
15. The Applicants' mother and brother immediately lost their lives at the scene of the event, whereas the Applicants and their father got serious bodily injuries.
16. The vehicle possessed a valid insurance policy for motor-vehicles from the Insurance Company "Sigal Uniqua Group" from Prishtina (hereinafter: the Insurance Company).
17. On an unspecified date, the Applicants filed the request for compensation of damage from the Insurance Company.
18. The Insurance Company rejected the entire request for compensation of damage.
19. On 23 November 2010, the Applicants filed a claim with the Municipal Court in Gjilan.
20. In these proceedings, the Applicants were claimants together with their father and the parents of their deceased mother.
21. On 8 November 2012, the Municipal Court in Gjilan (Judgment, C no. 586/2010) partly approved the statement of claim, by obliging the respondent to compensate the claimants for the caused damage.
22. The Municipal Court found that the accident was caused by a dangerous item and that the vehicle possessed valid insurance policy from the Insurance Company. As a result of the accident, the Applicants suffered from physical pain, fear and reduced living activity. According to the Municipal Court, the Applicants also suffered mental anguish for the loss of their family members.
23. Against this Judgment, both parties filed an appeal with the Court of Appeal. The claimants (the Applicants) in their appeal alleged erroneous application of the substantive law regarding the adjudicated amounts for compensation, whereas the Insurance Company as a responding party challenged the legal basis in entirety.
24. On 18 February 2015, the Court of Appeal (Judgment AC. No. 5087/2012) rejected as ungrounded the appeal of the Insurance Company, whereas partly approved the appeal of the claimants by increasing the adjudicated amount.

25. On 13 March 2015, the Insurance Company filed a revision with the Supreme Court against the Judgment of the Court of Appeal, alleging that the judgment contained erroneous application of the substantive law, especially emphasizing the following:

“Since we are dealing with a traffic accident involving two cars, which were from different countries, then the adjudication of the matter of damage compensation should have been conducted at the country where the accident – damage was caused.”

26. On 6 July 2015, the Supreme Court (Judgment Rev. no. 186/2015) approved the revision of the Insurance Company and modified the Judgments of the first and second instance courts by rejecting the entire claim of the Applicants, with the reasoning that the *“compulsory motor-liability insurance covers the whole territory of Kosovo”* and that for the disputes outside the territory of Kosovo are competent the courts of the country where the event happened.
27. Consequently, the Supreme Court held that the courts in the Republic of Albania were competent to adjudicate this civil-legal matter.
28. According to the Judgment of the Supreme Court, based on a Memorandum of Understanding (hereinafter: the MoU) signed between the Central Banking Authority of Kosovo (CBAK) and the Albanian Bureau of Insurance-Tirana (AIB), the courts of Kosovo did not have jurisdiction to adjudicate the dispute.
29. In its reasoning, the Supreme Court held that:

“[T]he lower instance courts have correctly and completely determined the factual situation, but based on such a situation, according to the assessment of this court, have erroneously applied the substantive law, when they found that the statement of claim of the claimants is grounded. This is due to the fact that pursuant to Article 1 item 1.5 of the Rule 3 on Amending Rule on Compulsory Third Party Liability Motor Vehicle Insurance, the compulsory motor-liability insurance covers the whole territory of Kosovo.

On 31.10.2006, the Central Banking Authority of Kosovo (CBAK) as an authorized entity of the Mission of Interim Administration of the United Nations Mission in Kosovo, for the issued of insurance of vehicles and the Albanian Bureau of Insurance-Tirana (AIB) as an authorized entity, responsible for the issue of vehicle insurance, signed Memorandum of Understanding. In Chapter III, which regulates the addressing and payment of claims for compensation in item 3 it was provided that MoU will include reporting, addressing and payment of claims for compensation for personal injuries and for loss of damage of property (a) that occurred as a consequence of an accident in the Republic of Albania, caused by the vehicles registered in Kosovo. By item 1 of the Chapter III of the Memorandum of Understanding, it was foreseen that each party will address and pay the claims for compensation that were addressed by the other party within the MoU, in accordance with Chapter IV of the Memorandum, namely in the interest of the insuring member as he issued

the insurance certificate and in accordance with legal provisions in force, within his territory.

For the reasons above, the Supreme Court of Kosovo, finds that the statement of claim of the claimants is ungrounded and in accordance with Article 224, para. 1 of LCP, decided as per enacting clause of this Judgment.”

Applicants’ allegations

30. The Applicants’ allegations are to be divided as follows:
- A. Allegations regarding violation of the right to a fair trial [Article 31 of the Constitution and Article 6 ECHR]
 - B. Allegations regarding violation of the principle of equality before law [Article 24 of the Constitution];
 - C. Allegations regarding violation of the protection of property [Article 46 of the Constitution and Article 1 of ECHR].

Allegations regarding violation of the right to a fair trial

31. The Applicants allege that the challenged judgment of the Supreme Court violated their right to a fair trial, because the Supreme Court did not provide an acceptable reasoning in its decision and by this did not guarantee a fair proceeding of the case in accordance with Article 6.1 of the ECHR.

32. According to the Applicants’ allegations:

“The Supreme Court not only did not provide the concrete reasoning on where is the erroneous application of the substantive law in the decisions of the lower instance courts, but its decision also lacks a concrete reasoning regarding Articles, which according to this court were allegedly violated by the judgments.

In fact, the court did not give any reasoning on why Article 47 item 2 of the Law on Contested Procedure cannot be applied, by which Article was determined the territorial jurisdiction of the competent court to adjudicate the cases dealing with damages caused due to death or serious bodily injury and in the present case this competence falls with the former Municipal Court in Gjilan.”

33. The Applicants further allege that:

“By this judgment, the Supreme Court did not make necessary efforts to analyze the Applicants’ allegations in all filed legal matters [...] and the findings of the Supreme Court are in full contradiction with the provisions of LCP and also with the MoU itself”.

34. According to the Applicants, the Supreme Court should have taken into account that the MoU has the character of an agreement of understanding and that it cannot have priority over the positive laws of a state.

35. The Applicants further allege that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, give the Applicants the right to access and use all legal remedies, which are applicable in the Republic of Kosovo. Thus, the Applicants allege that their right of access to court was violated.

Allegations regarding violation of the principle of equality

36. The Applicants claim that by its judgment, the Supreme Court violated the principle of equality before the law under Article 24 of the Constitution. In this regard they allege that the rejection of the possibility to exercise their rights before the court instances of Kosovo, only because the accident occurred in the territory of the Republic of Albania, clearly presents a violation of the equality before the law.

Allegations regarding violation of the protection of property

37. Finally, the Applicants allege that due to the failure to reason the grounds of rejection of the Applicants claim, namely the jurisdiction of the courts of Kosovo for adjudicating this dispute, the right to compensation for the Applicants were violated.

Applicants' request

38. The Applicants request the Court to annul the Judgment of the Supreme Court (Rev. No. 186/2015 dated 6 July 2015) and to uphold the Judgment of the Court of Appeal (Ac. no. 5087/2012 dated 18 February 2015).

Admissibility of the Referral

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

40. In this regard, Article 113, paragraph 7, of the Constitution, provides that:

“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.”

41. In addition, the Court also refers to Article 48 of the Law, which provides that:

“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.”

42. In addition, the Court 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:

[...]

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

43. The Court recalls that the Applicants claim that the challenged Judgment of the Supreme Court has violated their rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution as well as Article 6.1 [Right to a fair trial] and Article 1 of Protocol 1 [Protection of Property] of the ECHR.

Allegations regarding violation of the right to a fair trial

44. As to the Applicants' allegation that the Supreme Court of Kosovo has erroneously applied the substantive law and the MoU, the Court emphasizes that the application of substantive law is the competence of the regular courts.
45. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
46. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
47. The Court considers that the challenged decision of the Supreme Court contains all the necessary reasons on which it is based. In this regard, the Court also refers to the jurisprudence of the European Court of Human Rights, which held that Article 6 does not require a detailed answer to be provided to every argument put to the court during the course of the proceedings (See case *Van de Hurk v. the Netherlands*, App. No. 16034/90, ECtHR, Judgment 19 April 1994, par. 61)
48. Thus, the Court holds that the reasoning given in the Judgment of the Supreme Court is clear and in accordance with the requirements of Article 31 of the Constitution and Article 6 ECHR.

Allegations regarding violation of the principle of equality before the law

49. The Court observes that the Applicants also invoke Article 24 [Equality Before the Law] and claim that the principle of equality has been violated due to the rejection of the possibility to exercise their rights through the court instances of

Kosovo, only because the accident occurred in the territory of the Republic of Albania.

50. The Court holds that the Applicants have not shown that they have been treated differently compared to how other individuals in the same situation would have been treated. In order for an issue to be discriminatory there must be a difference in the treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. (See Case *Burden v. UK* [GC] No. 13378/05, ECHR, Judgment of 29 April 2008).
51. The Court holds that the Applicants have not presented any facts nor they have sufficiently substantiated their allegation about unequal treatment. When alleging such a constitutional violation, the Applicant must present a reasoned allegation and convincing argument.

Allegations regarding violation of the protection of property

52. The Court observes that the Applicants also invoke Article 46 [Protection of Property] of the Constitution. However, there is nothing in the Applicants' allegation that justifies a conclusion that their constitutional right to property has been violated.
53. The Court recalls that Article 46 of the Constitution and Article 1 of Protocol No. 1 do not guarantee the right to acquisition of property (see *Van der Musselle v. Belgium*, paragraph 48, ECHR Judgment of 23 November 1983, and *Slivenko and others v. Lithuania* paragraph 121 ECtHR Judgment of 9 October 2003).
54. In addition, the Applicants may allege a violation of Article 46 of the Constitution only in so far as the challenged decisions related to their "possessions"; within the meaning of this provision "possessions" can be "existing possessions", including claims, in respect of which the applicants can argue that they have at least a "legitimate expectation" that they will realize the effective enjoyment of their property right.
55. No "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the Applicant's submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia*, paragraph 50 of the Judgment of the ECtHR, of 28 September 2004).
56. In summary, the Court further reiterates that the role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *García Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

57. The Court clarifies that it is not its task to consider whether the Supreme Court correctly interpreted the pertinent laws and sub-legal acts related to the jurisdiction of the regular courts, as this falls within the scope of legality. It is the task of the Constitutional Court to ascertain whether the challenged judgement of the Supreme Court violated individual rights and freedoms protected by the Constitution (constitutionality).
58. In this regard, although the Applicants claim that their rights have been violated by erroneous application of the law by regular courts, the Applicants did not substantiated the claim that the abovementioned decisions violated their constitutional rights.
59. The Court considers that all the arguments of the Applicants that were relevant to the resolution of the dispute, were duly heard and duly examined by the regular courts, that the material and legal reasons for the decision the Applicants challenge were presented in detail and that, from the above, the proceedings before the regular courts, viewed in their entirety, were fair.
60. The Court considers that the admissibility requirements have not been met. The Applicants failed to prove their allegations that the challenged decision violated their constitutional rights and freedoms.
61. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 and 48 of the Law, and Rule 36 (1) (d) and 2) (d) of the Rules of Procedure, on 15 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. TO DECLARE this Decision effective immediately.

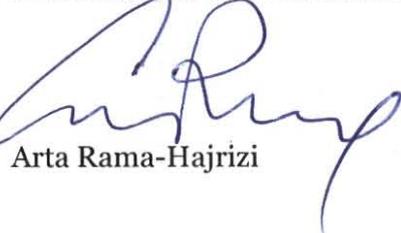
Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi