



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

Pristina: 26 June 2012
Ref. No.: RK260/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI156/11

Applicants

Zahide Samadraxha

Constitutional Review of the Judgments of the District Court of Prizren, Ac. No. 378/09, dated 1 October 2009, and of the Supreme Court of Kosovo, Rev. NO. 509/2009, dated 5 August 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Zahide Samadraxha of Banjë Village in the Municipality of Malishevo. She is unrepresented.

Challenged Decision

2. The Applicant challenges the Judgments of the District Court of Prizren, Ac. No. 378/09, dated 1 October 2009, and of the Supreme Court of Kosovo, Rev. NO. 509/2009, dated 5 August 2011.

Subject Matter

3. The subject matter of the Referral concerns the request of the Applicant to receive maintenance from the father of her minor child. The Applicant was not married to her minor child's father and her minor child resides with the father.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as "the Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

5. On 2 December 2011 the Applicant filed a Referral with the Constitutional Court.
6. On 17 January 2012 the President of the Constitutional Court appointed Judge Ivan Cukalovic as Judge Rapporteur. On the same date the President appointed a Review Panel composed of Judges Robert Carolan (presiding), Snezhana Botusharova and Kadri Kryeziu.
7. By letter dated 20 February 2012 the Court acknowledged the making of the Referral and it requested further information concerning the Referral from the Applicant.
8. The Applicant replied on 27 February 2012, which reply was received in the Court on 1 March 2012. In her reply the Applicant stated that she was not employed and that she had not received any financial support from the father of her minor child. She also maintained that the family and financial circumstances of the father were good, that he jointly owns some cadastral parcels, that his mother has a pension from abroad and that his brothers live and work in Italy.
9. A report prepared by the Judge Rapporteur was considered by the Review Panel on 18 June 2012 which made a recommendation on inadmissibility of the Referral to the full Court. The full Court considered the Referral on the same date.

Description of the facts of the case as evidenced by the documents furnished by the Applicants

10. On 17 June 2009 the Municipal Court in Malishevo, in Judgment C. nr. 269/2006 refused the claim of the Applicant for maintenance/alimony from the father of her minor child and it approved contact with her minor child one day per month. The Court held that the minor child now formed part of a family unit with the father, his wife and two sons.
11. The Applicant filed an appeal from that decision to the District Court in Prizren which in its Judgment Ac.no. 378/09, dated 1 October 2009, upheld the decision of the Municipal Court. The District Court noted that the claim in relation to contact between the Applicant and her minor child was no longer pursued.

12. The Applicant filed a further appeal from that decision to the Supreme Court which in its decision Rev. nr. 509/2009, dated 5 August 2011, upheld the earlier decisions refusing maintenance/alimony to the Applicant. This was served on her on 13 September 2011.

Alleged violations of the Constitution

13. The Applicants maintains in a general way that the Courts at every level have violated the Family Law of Kosovo, the Provisional Criminal Code of Kosovo and constitutional guarantees. The Referral does not go into greater detail.

Assessment of the admissibility of the referral

14. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

15. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It 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 exhaustion of all legal remedies provided by law."

16. Furthermore, Article 48 of the Law 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."

17. Finally, Rule 36 of the Rules of Procedure states:

*"1. The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.*

2. The Court may reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie justified, or

b) when the presented facts do not in any way justify the allegation of the violation of constitutional rights, or

c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

d) when the Applicant does not sufficiently substantiate the claim;"

18. The Applicant alleges that the Courts at all levels committed various violations. The Courts in their Judgments referred to a number of relevant Articles of the Family Law of Kosovo, Law Nr.2004/32, the most relevant of which were the following:

Article 279. Neediness

Only persons who can not financially maintain themselves are eligible to financial maintenance.

Article 281. Obligation of Reciprocal Information on Financial Situation

(1) Relatives in a direct line are obliged to disclose to each other their income and financial situation based on request.

(2) Based on request the person who is obliged to provide maintenance shall present written evidence and documents to give proof about his income and his financial situation.

Article 307. Capability for Alimony

(1) Persons who considering all other obligations are not able to provide alimony without endangering their own reasonable maintenance, are not obliged to provide maintenance.

(2) As far as they are able to provide alimony the obligation remains.

Article 330. Principles of Determination of Maintenance and Alimony

(1) The obligation to provide financial maintenance or alimony is determined in proportion to all means of the defendant and within the limits of the needs of the claimant.

(2) The court shall consider the defendants financial situation, ability to work, factual possibility of employment, health condition, personal needs, legal obligations and all other relevant circumstances.

(3) When alimony is demanded for the child, the court considers the age of the child and all needs for his education.

19. In the Municipal Court decision of 17 June 2009 the Court gave a reasoned judgment why certain evidence was relied by it in coming to its Decision, including, but not limited to, the current family circumstances of the minor child and the income of the father.
20. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

“ . . . the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).”

21. As further stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

“The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezőtur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005).”

22. The Applicant has not indicated in any way how the Courts, in all instances, have violated her constitutional rights.

FOR THESE REASONS

The Court, following deliberations on 18 June 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

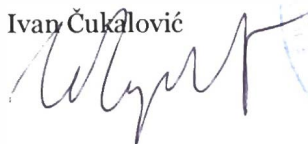
DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

