



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

Prishtina, 1 June 2015
Ref. No.: RK 803/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI164/14

Applicant

Shpëtim Halimi

**Constitutional review of the
Decision Rev. no. 223/2014 of the
Supreme Court of the Republic of Kosovo,
dated 1 September 2014**

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 and
Bekim Sejdiu, Judge.

Applicant

1. The Referral was submitted by Mr. Shpëtim Halimi, from Livoq i Ulët, municipality of Gjilan (hereinafter, the Applicant), who is represented by Mr. Skender Zenuni, a lawyer practicing in Gjilan.

Challenged Decisions

2. The Applicant challenges the Decision (Rev. no. 223/2014 dated 1 September 2014) of the Supreme Court of the Republic of Kosovo (hereafter, Supreme Court), by which the Applicant's request for revision was rejected.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly "*violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 24, paragraph 1 and 2 [Equality Before the Law] and Article 46, paragraphs 1, 2 and 3 [Protection of Property]*".

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 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 6 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 5 December 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kyeziu and Arta Rama-Hajrizi.
7. On 20 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 13 May 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On an unspecified date, the Applicant filed a claim with the Municipal Court in Gjilan, requesting confirmation of his right to pre-emption as well as the annulment of the sales contract regarding an immovable property.
10. On 27 December 2005, the Municipal Court (Decision C. no. 636/2004) concluded that the claim of the Applicant had been withdrawn and thus closed the matter without entering into the merits of the case.
11. The Applicant has not filed an appeal against the Decision of the Municipal Court.

12. On 23 November 2010, the Applicant filed with the Municipal Court in Gjilan a request to repeat the proceedings, claiming that “[...] *the whole proceeding was based on false statements and forged documents [...].*”
13. On 11 December 2012, the Municipal Court (Decision C. no. 636/2004) rejected as impermissible and incomplete the Applicant’s proposal to repeat the proceedings since “[...] *the subjective deadline of 30 days and objective deadline of 5 years has passed*”. The Municipal Court also emphasized that the Applicant, in his request to repeat the proceedings, has not “[...] *submitted any evidence to confirm such claims*”.
14. The Applicant appealed to the Court of Appeal against the Judgment of the Municipal Court.
15. On 15 May 2014, the Court of Appeal (Decision Ac. no. 4943/2012) rejected as ungrounded the appeal of the Applicant and confirmed the Decision of the Municipal Court.
16. The Applicant filed a request for revision with the Supreme Court against the Decisions of the Court of Appeal and Municipal Court.
17. On 1 September 2014, the Supreme Court (Decision Rev. no. 223/2014) rejected the Applicant’s request for revision, holding that

“[...] in this particular case there has been no conclusion on the merits because the contested procedure was concluded with a Decision on withdrawal [by the Applicant] of the claim [...].

In cases when a proposal to repeat the proceedings is submitted pursuant to Article 232 items c) and d) of the LCP [Law on Contested Procedure], the time limit to submit the proposal pursuant to Article 234 item d) and 3) of the LCP is 30 days from the day the proposer has been serviced the final Judgment. The proposer submitted his proposal on this ground but, not only did he not enclose with the proposal such Judgment, but, in the reasoning of the proposal he does not even mention such Judgment [...]. The proceeding which is sought to be repeated, was concluded with the final Decision C.no.636/04 of 27.12.2005 whereas the proposal for repeating the proceeding was submitted on 24.11.2010.”

Applicant’s allegations

18. The Applicant claims that the regular courts, by rejecting his request to repeat the proceedings, have violated his rights guaranteed by the Constitution, namely rights pertaining to “*equality before the law and protection of property*”.
19. The Applicant alleges that his right to equality, guaranteed by Article 24 [Equality Before the Law] of the Constitution, was violated, because he “[...] *was not provided with the opportunity to express himself before the Judge assigned to the case*”.

20. The Applicant also alleges that his right to protection of property, guaranteed by Article 46 [Protection of Property] of the Constitution, was violated, because “[...] the Judge assigned to the case [...] has denied me the right to my grandparent’s immovable property”.

21. The Applicant concludes by addressing the Court with the following statement:

“[...] Shpëtim Halimi is of good will that this civil contest be resolved in that way that the immovable property of the grand grandfather be returned to the owner, respectively to his nephew Shpëtim Halimi. This immovable property was taken in an arbitrary manner by the Judge assigned to the case and, who, according to Shpëtim Halimi obliged him to deposit [...] DM [Deutschland Mark] for the grand grandparent’s immovable property. [...].”

Admissibility of the Referral

22. The Court has first to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

23. In that respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of the Law

“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”.

Rule 36 of the Rules of Procedure

*“[...] (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”.*

24. The Court recalls that the Applicant challenges the Decision (Rev. no. 223/2014, dated 1 September 2014) of the Supreme Court, alleging a violation of his right to equality before the law and protection of property, as guaranteed by the Constitution.

25. In fact, the Applicant argues, in general and without referring to any particular decision of the lower courts, that he was not provided with an “*opportunity to present his case*” before the regular courts and that allegedly his right as a “*successor*” of his grand grandfather’s immovable property was violated.

26. The Court observes that the Applicant has not provided any procedural or substantive reasoning in his Referral; he merely states the aforementioned claims without explaining further how such violations have occurred.

27. In that respect, the Court notes that the Municipal Court rejected the Applicant's request to reopen the proceedings by considering that the deadline to submit such request has passed and that, in any case, the Applicant has not presented any evidence in support of his request.
28. The Court also notes that the Court of Appeal reasoned its decision in respect to Applicant's allegations of "*essential violation of contested procedure provisions and violation of material law*" by confirming that the Municipal Court has correctly applied the material law when rejecting the Applicant's request to reopen the proceedings.
29. Furthermore, the Court notes that the Supreme Court rejected the Applicant's request for revision as ungrounded by reasoning that: "[...] *the stance of the lower courts which rejected as impermissible the proposal to repeat the proceedings is accepted in its entirety because the challenged decisions did not contain any essential violations of the provisions of the contested procedure for which the Court of revision pursuant to Article 215 of the LCP takes care ex officio.*"
30. The Court considers that the proceedings before the Municipal Court, the Court of Appeal and the Supreme Court have been fair, and the decisions are thoroughly justified and reasoned.
31. Therefore, the Constitutional Court concludes that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
32. Moreover, the Applicant has neither accurately clarified how and why the challenged decisions which rejected his request to repeat the proceedings entailed a violation of his individual rights and freedoms guaranteed by the Constitution nor has he presented evidence justifying the allegation of such a violation.
33. In this respect, 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 public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
34. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

35. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support his claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.
36. In sum, the Court concludes that the Applicant's allegations of a violation of his rights to equality before the law and to protection of property are unsubstantiated and not proven and, thus, are manifestly ill-founded.
37. For the foregoing reasons, the Court considers that, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (2) (d) and 56 (b) of the Rules of Procedure, on 1 June 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani