



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

Prishtina, on 30 October 2015
Ref. No.: RK 849/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI35/15

Applicant

Sami Omura

**Constitutional review of Decision Rev. no. 341/2014 of the Supreme
Court of the Republic of Kosovo of 6 January 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Sami Omura, with residence in village Greme, Municipality of Ferizaj, represented by Mr. Sabri Kryeziu, lawyer.

Challenged decision

2. The Applicant challenges Decision Rev. no. 341/2014 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 6 January 2015, which was served on the Applicant on 16 February 2015.

Subject matter

3. The subject matter is the constitutional review of the Decision (Rev. no. 341/2014, of 6 January 2015) of the Supreme Court, which allegedly violated the rights guaranteed by Article 1 paragraph 2 [Definition of State]; Article 22 (7) [Direct Applicability of International Agreements and Instruments]; Article 37 paragraph 1 and 2 [Right to Marriage and Family] and Article 50, paragraphs 1 and 2 [Rights of Children] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 3 of the Convention on the Rights of the Child (hereinafter: the CRC).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 23 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 April 2015 the President of the Court, by Decision No. GJR. KI35/15, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI35/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajziri.
7. On 7 May 2015 the Court informed the Applicant about the registration of Referral and requested additional documentation from him. A copy of the Referral was sent to the Supreme Court.
8. On 1 July 2015 the President of the Court by Decision No. GJR. KI35/15 appointed Judge Altay Suroy as Judge Rapporteur, replacing Judge Kadri Kryeziu, whose mandate as a Judge ended on 26 June 2015, and by Decision No. KSH. KI35/15, the Deputy President Ivan Čukalović, replaced Judge Altay Suroy in the composition of the Review Panel.
9. On 11 September 2015 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 the facts in administrative proceedings

10. On 2 August 2010 the Applicant together with his wife filed a request for the adoption of a male child (case no. 25-2337) with the Center for Social Work in Ferizaj (hereinafter: the CSW in Ferizaj).
11. On 13 May 2011 the CSW in Ferizaj addressed the CSW in Malisheva, requesting whether the latter had a male child waiting for adoption, as the CSW in Ferizaj did not have any children for adoption.
12. On 24 April 2012 the CSW in Malisheva notified (Notification no. 30/1197) the CSW in Ferizaj that they had a male child for adoption.

Summary of facts in civil proceedings

13. On 21 September 2012 the Applicant submitted a proposal to the Municipal Court in Ferizaj to adopt the child A. Z., who was in the care of the CSW in Malisheva.
14. On 30 May 2013 the Municipal Court in Ferizaj, by Decision Nd. no. 366/12, set a trial period of 3 (three) months to establish the relationship of adoption and obliged the CSW in Ferizaj to supervise the trial period from 31 May 2013 until 31 August 2013, and then to submit to the said court an evaluation report in writing.

Summary of facts in execution proceedings

15. On 31 May 2013 the Applicant submitted a proposal to the Basic Court in Gjakova, Branch in Malisheva, for execution of Decision Nd. no. 366/12 of the Municipal Court of Ferizaj, as the CSW in Ferizaj had not delivered the child to the Applicant, in order that the trial period is executed according to the order of the Municipal Court in Ferizaj.
16. On 3 June 2013 the Basic Court in Gjakova, Branch in Malisheva, rendered Decision E. No. 724, which permitted the execution proposed by the Applicant.
17. On 7 June 2013 the CSW in Malisheva filed an objection with the Basic Court in Gjakova, Branch in Malisheva, against execution of Decision Nd. no. 366/12 of the Municipal Court in Ferizaj, claiming that the said decision was rendered without the consent of the legal custodian and contrary to evaluations of the CSW in Ferizaj and the CSW in Malisheva.
18. On 10 June 2013 the Applicant filed with the Basic Court in Gjakova, Branch in Malisheva, a response to the objection and proposed that the objection filed by CSW be declared as ungrounded, and requested the execution of Decision Nd. no. 366/12 of the Municipal Court in Ferizaj.
19. On 12 June 2013 the Basic Court in Gjakova, Branch in Malisheva (Decision E. no. 724/13), approved the objection filed by CSW in Malisheva and decided to

annul Decision E. no. 724/13 of 3 June 2013, which permitted the execution of Decision Nd. no. 366/12 of the Basic Court in Gjakova, Branch in Malisheva.

20. The Applicant filed an appeal with the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) against Decision E. no. 724/13, of 12 June 2013 of the Basic Court in Gjakova, Branch in Malisheva, due to alleged violations of the law on execution procedure.
21. On 9 July 2013 the Court of Appeals (Decision, Ac. No. 1802/2013) rejected the Applicant's appeal as ungrounded and upheld Decision E. no. 724/13 of the Basic Court in Gjakova, Branch in Malisheva, of 12 June 2013.
22. On 16 July 2013 the Applicant submitted a proposal for filing of the request for protection of legality to the State Prosecutor against Decision Ac. no. 1802/2013 of the Court of Appeals.
23. On 26 July 2013 the State Prosecutor (Notification KMLC. No. 73/13) rejected the Applicant's proposal for filing the request for protection of legality because he did not find any grounded legal basis for exercising this legal remedy.
24. On 19 August 2013 the Applicant filed a request for reconsidering the proposal for filing the request for protection of legality with the Chief State Prosecutor.
25. On 26 August 2013, the Chief State Prosecutor notified that he stood by Notification KMLC. no. 72/13 of the State Prosecutor of 26 July 2013.

Summary of facts concerning the repetition of the court proceedings

26. The Applicant filed a request for repetition of the establishment of adoption relationship with the Basic Court in Ferizaj.
27. On 27 September 2013 the Basic Court in Ferizaj (Decision Nd. No. 366/12) rejected the Applicant's proposal to establish the adoptive relationship with respect to the child.
28. On 11 October 2013 the Applicant filed an appeal with the Court of Appeals against Decision Nd. no. 366 /12 of the Basic Court of Ferizaj due to essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
29. On 12 September 2014 the Court of Appeals (Decision Ac. No. 3423/2013) rejected the Applicant's appeal as ungrounded and upheld Decision Nd. no. 366/12 of the Basic Court of Ferizaj, of 27 September 2013.
30. In its decision, the Court of Appeals reasoned that “... *in the provision of Article 179, paragraph 1 and 3 of the Family Law of Kosovo, it is explicitly stated that: “The adopting party shall only be a Kosovo citizen”, namely, the resident residing in Kosovo, (because no person can have two permanent residences in two countries at the same time). Meanwhile, in paragraph 3 of the same*

Article, the following is stated: "The preliminary consent of the administrative bodies who deal with social work policies shall be required for adoption by a foreign citizen [...]", meanwhile, even if the proposers were citizens of Kosovo, again, the consent of the custodian, as well as the initiation of the procedure, through him, is to be done, anyway, while in the present case, neither of these was applied [...]"

31. On 24 October 2014 the Applicant filed a request for revision with the Supreme Court against Decision Ac. no. 3423/2013 of the Court of Appeals due to essential violations of the contested procedure and erroneous application of the substantive law.
32. On 6 January 2015 the Supreme Court (Decision Rev. no. 341/2014) rejected the request for revision of the Applicant, as ungrounded, and found that based on the factual situation, the lower instance courts acted correctly when they rejected the Applicant's proposal for the adoption of a minor.
33. Moreover, the Supreme Court reasoned that:

"The Center for Social Work in Malisheva, in its written report ... did not give any recommendation to the court for adopting the minor. By this, the necessary requirement provided by Article 169.1, in conjunction with Article 171 of the Family Law of Kosovo is not fulfilled because the consent of the Custodian of minor for the adoption, is missing.

The proposers filed the request based on the adoption procedures as citizens of Kosovo, and not as persons who live abroad. Pursuant to the provisions in question, this Panel has been assigned for adoption out of Kosovo, in order to apply the Hague Convention on the Rights of the Child, in order to protect the child.

The allegations in the revision, according to which the proposers are citizens of Kosovo, are ungrounded, due to the uncontested fact that the proposers ...have a permanent stay in FR of Germany, since 1993. Hence, the child should be adopted out of Kosovo and in the concrete case, the adoption is to be subject to a special procedure and the opinion of the special Panel- which functions at the Ministry of Labor and Social Welfare- is necessary... "

Applicant's allegations

34. The Applicant alleges that Decision Rev. no. 341/2014 of the Supreme Court and the decisions of the regular courts have violated the guaranteed rights as referred to in paragraph 3 of this document.
35. The Applicant further requests the Court to execute Decision Nd. no. 366/12, of the Municipal Court in Ferizaj, of 30 September 2013, which approved the trial period for the establishment of an adoptive relationship.

Admissibility of the Referral

36. The Court first examines whether the Applicant's Referral meets the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

37. In this regard, the Court refers to Article 48 of the Law, which 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".

38. 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) 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."

39. In the present case, the Court notes that the Applicant alleges that Decision Rev. no. 341/2014 of the Supreme Court, of 6 January 2015, violated his rights guaranteed by Articles 1, 22, 37 and 50 of the Constitution and Article 3 of the CRC.

40. In fact, the Applicant alleges that the proceedings completed before the regular courts violated the legal provisions that regulate the field of family in the Republic of Kosovo.

41. Regarding the alleged violations of the abovementioned constitutional provisions, the Court considers that the Applicant merely states that there has been a violation of his rights and freedoms, without explaining how and why the facts that he presents constitute a violation of those rights.

42. The Court notes that the Applicant also alleges that there has been a violation of his rights guaranteed by Article 3 of the CRC, which states:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally

responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”.

43. However, the Court considers that although the Applicant raised allegations of a violation of Article 3 of the CRC, he does not further argue as to how and why the regular courts violated this right, as this article is quite generalized and includes a range of rights and obligations arising from the Convention for the contracting states.
44. The Court notes that the Supreme Court considered each Applicant's allegation, explaining in detail, why the Applicant's request for revision should be rejected as ungrounded, and the decision of the lower instance court be upheld.
45. Based on the case file, the Court considers that the Decision of the Supreme Court does not violate the rights guaranteed by the Constitution and international instruments, as alleged by the Applicant in this Referral.
46. Regarding the other allegations pertaining to the factual situation and the interpretation of the provisions of law, 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 courts or public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
47. The Court also reiterates that it does not act as a court of fourth instance in relation to the decisions taken by the regular courts or other public authorities. It is the role of regular courts or other public authorities to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz vs. Spain*, no. 30544/96, para. 28, ECtHR Judgment of 21 January 1999).
48. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, *Edwards v. United Kingdom*, no. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
49. The Court further considers that the proceedings in the regular courts, including those in the Supreme Court, were fair and reasoned (see, *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECtHR Decision of 30 June 2009).
50. The Court also notes 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 he has not specified how the abovementioned Articles of the Constitution

support his allegations, as provided by Article 113.7 of the Constitution and Article 48 of the Law.

51. In sum, the Court concludes that the Applicant's allegations of violation of his rights and freedoms are unsubstantiated and ungrounded. Therefore, his Referral must be declared inadmissible as manifestly ill-founded.

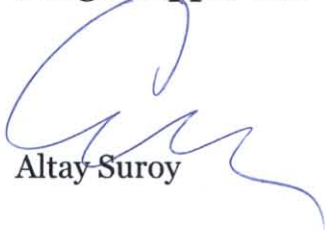
FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) c), 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 30 October 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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


Altay Suroy

President of the Constitutional Court


Arta Rama-Hajrizi

