



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

Pristine, 06 November 2012
Ref. No. RK322 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI36/12

Applicant

Bajram Luta

**Constitutional Review of the Supreme Court Judgment Ac. No. 116/2011 dated
17 January 2012**

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

Applicant

1. The Applicant is Bajram Luta, residing in village Radoste, Municipality of Rahovec.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Ac. No. 116/2011 dated 17 January 2012.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the constitutionality of the Judgment issued by the Supreme Court of Kosovo on 17

January 2012 relating to the international child abduction, by which the Applicant's appeal against Decision of the Supreme Court PPC no. 62/11 of 29 September 2011 was rejected as ungrounded and earlier Decision of the Supreme Court PPC no. 62/11 was confirmed.

4. In his Referral the Applicant proposed to the Constitutional Court to "protect constitutionality and legality" against the challenged decision.
5. The Applicant asserts that his rights guaranteed by Article 113 of the Constitution and by Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law) have been violated.

Legal Basis

6. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of 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).

Proceedings before the Court

7. On 3 April 2012, the Applicant submitted a referral with the Constitutional Court.
8. On 23 May 2012, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
9. On 1 June 2012, the Court notified the Applicant and the Supreme Court with the referral.
10. On 17 October 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. On 11 October 2010, the Centre for Social Work Rahovec issued Decision No.02-313/2010 and put a minor child, the Applicant's grandchild, under the Applicant's temporary custody.
12. On 29 March 2011, the District Court in Pristina, issued Decision N.Nj. C 2/2011 and ordered the Applicant to return the minor child to its mother. It was also decided that in the case of the non-compliance by the Court's order, the Applicant will be punished with a fine of 10,000 Euro.
13. The District Court in Pristina stated in the reasoning of above mentioned Decision that the minor child lives with the Applicant without the permission of the child's mother. It was also stated that both the Ministry of Justice of the Republic of Kosovo and the Ministry of Justice of the Republic of Austria requested from the Applicant to return the child to its mother. The District Court in Pristina further argued that the Applicant's behavior is contrary to the Law No 03/L- 238 on the Civil Aspects of International Child Abduction and the Hague Convention on the Civil Aspects of International Child Abduction.
14. Unsatisfied with the decision of the District Court in Pristina, the Applicant submitted an appeal to the Supreme Court.

15. Following the Applicant's appeal, the Supreme Court issued, on 10 June 2011, Decision AC No 40/2011 whereby the Applicant's appeal was rejected as ungrounded and the District Court in Prishtina judgment N.nj. 2/2011 dated 29 March 2011 was confirmed. The Supreme Court underlined that "the appeal claims of the counter proposal are irrelevant in the concrete case and have not been proved with any evidence which may bring in question the grounds of the decision."
16. Unsatisfied with the outcome of the proceedings before the Supreme Court the Applicant then requested the Supreme Court to reopen the procedure.
17. The Kosovo Supreme Court rejected the Applicant's proposal for reopening the procedure by its Decision PPC no 62/11 dated 29 September 2011.
18. In the reasoning the Supreme Court stated that "the Supreme Court finds that it is not necessary to hold the court session regarding the review of the request for international child abduction according to the provisions of the Law on civil aspects of international child abduction (Law no.03/L-238) and ... the Law on uncontested procedure and the provisions of the European Convention (25.10.1980) for civil aspect of child abduction, therefore the Supreme Court has found that non participation of the parties in procedure in sessions is not an essential violation of the uncontested procedure based on which the first instance decision was taken."
19. On 26 September 2011, the Centre for Social Work Rahovec issued a new Decision in the case No.02-313/2010 and quashed its earlier decision of 11 October 2010 whereby the Applicant was granted with a temporary custody. The Centre notified that the reason for this decision was unification of the minor child with its mother.
20. The Applicant then challenged the Decision of the Kosovo Supreme Court (PPC no 62/11 dated 29 September 2011) to the Supreme Court Panel. He argued, inter alia, that "the Court did not give the possibility to the counter proposer (i.e. the Applicant) to take place in the hearing in order to make the right decision regarding this family issue."
21. On 17 January 2012, the Supreme Court rejected the Applicant's appeal as ungrounded and confirmed Decision of the Supreme Court PPC no 62/11 dated 29 September 2011. The Supreme Court asserted, inter alia, that "new evidence have no influence in issuing different decision from the one deciding to return the child. In accordance to the Convention on rights of child and in accordance with Universal Declaration on Human Rights the courts always act in the interest of minor children."

Applicable Law

22. Article 11 of Law No 03/L- 238 on the Civil Aspects of International Child Abduction of 9 November 2010 reads as follows:

Return Order

1. *The Court shall mandatory order the return of a child from Kosovo to Requesting State if:*
 - 1.1. *the child has been wrongfully removed to or retained in Kosovo; and*
 - 1.2. *from the date the application was received by the Ministry of Justice a period of less than one (1) year has elapsed from the date of the wrongful removal to or retention of the child in Kosovo.*
2. *The Court shall also order the return of a wrongfully removed child even where the application was received after the expiration of the period of one (1)*

year referred to in paragraph 1 of this Article, unless it is demonstrated that the child is now settled in its new environment.”

Applicant’s Allegations

23. As it was mentioned earlier, the Applicant asserts, without further specifying, that his rights guaranteed by Article 113 of the Constitution and by Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law) have been violated.
24. Furthermore, the Applicant’s emphasizes that the Supreme Court of Kosovo when dealing with his case violated Article 3 item 1.1. of the Law No 03/L- 238 on the Civil Aspects of International Child Abduction.

Assessment of the Admissibility of the Referral

25. As it was mentioned earlier, the Applicant’s main argument is the Supreme Court of Kosovo when dealing with his case violated Article 3 item 1.1. of the Law No 03/L- 238 on the Civil Aspects of International Child Abduction, that reads as follows:
 - 1.1. *“The removal or the retention of a child is wrongful where:*
 - 1.2. *it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, ...”*
26. The Constitutional Court would like to recall that, under the Constitution, 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 Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
27. In this regard the Constitutional Court notes from the facts submitted in the Referral, the Applicant have used all legal remedies available, and that the regular courts have taken into account and indeed answered his appeals on the points of law.
28. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
29. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any prima facie evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
30. It follows that the Referral is manifestly ill-grounded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that “The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded.”

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure of the Constitutional Court the Constitutional Court, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

Prof. dr. Ivan Čukalović



President of the Constitutional Court

Prof. dr. Enver Hasani

