



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

Prishtina, 4 September 2015
Ref. No.: RK 840/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI36/15

Applicant

Sahit Ninaj

**Constitutional Review of Decision of the Supreme Court,
Rev. no. 378/2014, of 29 December 2014**

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. Sahit Ninaj, with residence in Prizren.

Challenged Decision

2. The Applicant challenges Decision Rev. No. 378/2014, of the Supreme Court, of 29 December 2014, by which the Applicant's request for revision against the Decision CA. no. 611/2014, of the Court of Appeal, of 25 August 2014, was rejected as inadmissible. The Applicant alleges that the challenged Decision was served on him on 30 January 2015.

Subject Matter

3. The subject matter is the constitutional review of the aforementioned Decision Rev. no. 378/2014, of the Supreme Court, which according to Applicant's allegations has violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter: the ECHR).

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 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 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, by Decision GJR. KI36/15, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, by Decision KSH. KI36/15, the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 28 April 2015, the Court informed the Applicant about the registration of the Referral, and submitted a copy of the Referral to the Supreme Court.
8. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court to declare the Referral inadmissible.

Summary of Facts

9. Based on the facts described by the Applicant in the Referral addressed to the Court, the Applicant, on an unspecified date, addressed the Municipality of Prizren with the request that the latter provides and delivers him a parcel from the Municipal Fund of Immovable Properties, as a compensation for his house burned down during the war. The Applicant further states that the place, where his house was located, was mined. According to the Applicant, the Municipality of Prizren has never responded to his request.

10. Following the request asserted in the preceding paragraph, on 22 April 2009, the Applicant filed a claim with the Municipal Court in Prizren, through which he has requested that the Municipality of Prizren compensates him with an immovable property in a surface area of 2 are for the construction of his house.
11. On 18 November 2010, the Municipal Court in Prizren (Decision, C. no. 280/09) decided to suspend the proceedings with the reasoning that the Municipality of Prizren was a litigating party in a capacity of a respondent, and therefore, for the claims against the public authority through which is required monetary compensation or other compensation, the Applicant had to provide a copy of the documents to the Ministry of Justice.
12. As a result of the above mentioned Decision of the Municipal Court in Prizren, the Applicant notified the Ministry of Justice on his claim.
13. On 10 May 2011, the Applicant, in his urgency addressed the Municipal Court in Prizren, requested the Municipal Court to schedule the session of the main hearing, and he also stated that the value of the dispute is € 3.100 and not € 50 as he had stated in his claim filed on 22 April 2009.
14. On 12 December, 2013, the Basic Court in Prizren (Decision, C. no. 280/09) held that the claim submitted was incomplete because it did not contain the necessary elements of a claim as required by the provisions of the Law on Contested Procedure (hereinafter: the LCP). As a result, the Basic Court remanded the Applicant's claim for completion and correction, requesting the Applicant that within three (3) days to specify the manner of compensation for immovable property for which the compensation is required and to identify the immovable property, where the Applicant's house was located.
15. In its Decision, the Basic Court, *inter alia*, stated that if the claim is not completed and corrected as required by its Decision, the claim will be rejected.
16. As a result of the above mentioned Decision, on 23 December 2013, the Applicant filed with the Basic Court the submission with supplement to the claim. Regarding the manner of compensation of immovable property, the Applicant requested as compensation for his burnt house that Prizren Municipality provides him a parcel of immovable property from the Municipal Fund of Immovable Property, by not specifying the immovable property, which he requested as compensation. Regarding the identification of immovable property where his burnt house was located, the Applicant stated that this real estate can be identified on the basis of expertise.
17. On 26 December 2013, the Basic Court in Prizren (Decision, C. no. 280/2009) rejected the Applicant's statement of claim.
18. In its Decision, the Basic Court in Prizren found that despite the submission filed by the Applicant on 23 December 2013, the Applicant did not correct and supplement the lawsuit as requested by the decision of 12 December 2013. As to the way of compensation of immovable property, the Basic Court found that the Applicant did not specify the manner of compensation of the immovable

property and did not identify the immovable property or the parcel for which he sought compensation.

19. On 22 January 2014, the Applicant submitted an appeal to the Court of Appeal against the Decision of the Basic Court in Prizren. In his appeal, the Applicant alleged violation of the contested procedure, incomplete determination of factual situation and erroneous application of the substantive law.
20. On 25 August 2014, the Court of Appeal (Decision, Ca. no. 611/2014) rejected the Applicant's appeal as ungrounded and upheld Decision C. No. 280/09, of the Basic Court in Prizren, of 26 December 2013.
21. In its Decision, the Court of Appeal held that the Applicant has not specified his claim as requested by the Basic Court in Prizren. Therefore, according to the Court of Appeal, the Applicant's allegations of erroneous and incomplete determination of factual situation and erroneous application of substantive law were ungrounded because the Basic Court in Prizren did not go into determination of factual situation and was unable to apply the substantive law, because the Basic Court rendered its Decision pursuant to procedural provisions.
22. On 9 October 2014, the Applicant filed a request for revision with the Supreme Court against the aforementioned Decision of the Court of Appeal.
23. On 29 December 2014, the Supreme Court (Decision, Rev. no. 378/2014) rejected the request for revision as inadmissible.
24. The Supreme Court, referring to the provisions of the LCP, found that the revision in this legal matter is not admissible, because the value of disputed facility, which the Applicant stated in his statement of claim and which value was not changed by submission for supplement of his claim, is less than the value of the subject of the dispute, as specified in the provisions of the abovementioned Law.

Applicant's Allegations

25. As mentioned above, the Applicant alleges that the challenged Decision has violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.
26. The Applicant further alleges that the regular courts, by their decisions, have also violated his right guaranteed by Article 6 of the ECHR, because his claim was not considered at all.
27. The Applicant concludes by requesting the Court to *"return the previous situation before decisions, Rev. No. 378/2014, dated 29 12 2014, Ac. no. 611/2014, dated 25.8. 2014 and C. No, 280/2009, dated 26.12.2013, because in such a situation my statement of claim can be considered and the court decision on merits in the Basic Court in Prizren can be rendered."*

Admissibility of the Referral

28. The Court first examines whether the Applicant has met admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. The Court takes into account 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.”

30. 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.

31. In his Referral, the Applicant alleges, among other things, that his right to fair and impartial trial has been violated because the regular courts by rejecting his claim as incomplete, and by rejecting his request for revision as inadmissible have not considered at all his claim.

32. In this regard, the Court notes that the Basic Court in Prizren, following its request for completion and specification of the claim filed by the Applicant, decided to reject the claim because the claim did not contain necessary elements of claim as required by provisions of the LCP. As a result of the Applicant's appeal against the abovementioned decision, the Court of Appeal upheld the decision of the Basic Court, holding that the Basic Court in Prizren rendered its decision by applying the relevant provisions of the procedural law.

33. In addition, the Court also notes that the Supreme Court, by referring to the relevant provisions of the procedural law, rejected the Applicant's request for revision as inadmissible, because the value of the subject of the dispute, which the Applicant stated in his claim, and which value according to the Supreme Court was not changed either by the submission for supplement of his claim, is less than the value of the subject of the dispute, specified in the provisions of the LCP.

34. However, the Applicant does not explain and show how his rights and freedoms guaranteed by the Constitution and the ECHR have been violated, in particular his right to fair and impartial trial.
35. In this regard, the Court notes that the Applicant does not agree with legal qualification of the facts and application of the procedural provisions by regular courts. Legal qualification of the facts and applicable law are issues which fall within the scope of legality.
36. In this regard, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the regular courts, except and to the extent they might have violated the rights and freedoms protected by the Constitution (constitutionality)
37. The Court further considers that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings conducted before the regular courts, in particular before the Supreme Court, is not sufficient for an Applicant to build an allegation on a constitutional violation (See *mutatis mutandis* case *Mezotur-Tiszazugi Vizgazdálkodási Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such a violation of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument (See case No. KI198/13 Applicant *Privatization Agency of Kosovo*, Constitutional Court, Resolution on Inadmissibility of 13 March 2014)
38. Therefore, the Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and substantive law (See, *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
39. Finally, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent violations of the constitutional rights (See case *Vanek v. Republic of Slovakia*, No. 53363/99, ECHR Admissibility Resolution of 31 May 2005).
40. For the aforementioned reasons, the Court concludes that the facts presented by the Applicant do not in any way justify his allegation of a violation of the constitutional rights and that the Applicant has not sufficiently substantiated his claim.
41. Therefore, the Referral is manifestly ill-founded, and therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, on 4 September 2015, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Bekim Sejdiu

President of the Constitutional Court



Arta Rama-Hajrizi