



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

Pristina, 10 November 2014
Ref. no.:RK723/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI63/14

Applicant

Misin Rifati

**Constitutional Review of Judgment C. no. 71/2002 of the Municipal
Court in Ferizaj, of 17 December 2002**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The referral was submitted by Mr. Misin Rifati (hereinafter, the Applicant) residing in Talinoc i Jerlive, Municipality of Ferizaj.

Challenged decision

2. The Applicant challenges Judgment C. no. 71/2002 of the Municipal Court in Ferizaj of 17 December 2002, which was served on the Applicant on 20 January 2003.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights].

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 3 April 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 May 2014 the President of the Court by Decision, GJR. KI63/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and by Decision, KSH. KI63/14 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 23 September 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. According to the Applicant on 17 August 2001, the Municipal Court issued Decision T. no. 8/2001 on the division of the inheritance of his late father, which was not submitted by the Applicant.
9. On 17 December 2002, the Municipal Court (Judgment C. nr. 71/2002) (in the civil case of S. R. vs. others including the Applicant), verified that S. R. is the owner of the immovable property no. 318 in "Dugaqke Njive – Arat e Gjata". According to the submitted documents no appeal was filed within the prescribed time limit.
10. During the year of 2006 the applicant has addressed several institutions regarding his dissatisfaction with the outcome of the above mentioned case.

11. On 12 March 2013, the Applicant has submitted a request to “*revise the decision on the division on inheritance*” before the Municipal Court in Ferizaj. The case is still pending before the Municipal Court (case C. no. 180/2013).

Applicant’s allegations

12. The Applicant alleges violation of his rights as guaranteed by the Constitution namely, Article 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights].
13. In addition the Applicant requests from the Court “*to confirm that the immovable property no.318 in “Dugaqke Njive – Arat e Gjata” should be transferred under my name*”.

Admissibility of the Referral

14. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
15. As to the present referral, the Court refers to Rule 36 (3) h) which reads as follows: “*A referral may also be deemed inadmissible if the Referral is incompatible ratione temporis with the Constitution.*”
16. In order to establish the Court’s temporal jurisdiction it is essential to identify, in each specific case, the exact time of alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of constitutional right alleged to have been violated (see, *mutatis mutandis*, European Court of Human Rights Chamber Judgment in case of *Blečić v. Croatia*, Application no.59532/0, dated 8 March 2006, para. 82).
17. The Court notes that the Applicant challenges Judgment C. no. 71/2002 of the Municipal Court in Ferizaj of 17 December 2002, which was served on the Applicant on 20 January 2003.
18. This means that the alleged interference with Applicant’s right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of the entry into force of the Constitution and from which date the Court has temporal jurisdiction.
19. It follows that the Applicant’s referral in relation to the challenged decision is incompatible *ratione temporis* with the provisions of the Constitution.
20. However, the Court notes that in 2013, the Applicant has already made a submission before the Basic Court requesting the court to review the challenged decision. This case is still pending before this court (case C. nr. 180/2013).
21. The Court recalls that in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113.7 of the Constitution.

22. In the present case, the Court notes the Applicant's referral is premature and thus there is no final decision to be challenged.
23. In all, the Court concludes that the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (3) h) and 56 (2) of the Rules of Procedure, on 23 September 2014, unanimously

DECIDES

- I. TO REJECT 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



Arta Rama-Hajrizi

President of the Constitutional Court



Prof. Dr. Enver Hasani