



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 17 October 2012
Ref. No.: RK316/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI70/12

Applicants

Zahir and Hazir Sinani

**Constitutional Review of the Judgment of Municipal Court in Prishtina
C.no.2005/2005 dated 13 October 2008, Judgment of District Court in Prishtina
Ac.no.76/2007 dated 22 October 2008 and Resolution of Supreme Court Rev.
no. 27/2009 dated 14 May 2012,**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy President
Robert Carolan, judge
Altay Suroy, judge
Almira Rodrigues, judge
Snezhana Botusharova, judge
Kadri Kryeziu, judge and
Arta Rama-Hajrizi, judge

Applicant

1. The Referral was submitted by Zahir and Hazir Sinani, from the village Hajvali, municipality of Prishtina, through their representative Mr. Xhevat Bici attorney at law, from Prishtina.

Challenged decision

2. The Applicants challenge the following court decisions: the Judgment of Municipal Court in Prishtina C.no.2005/2005 dated 13 October 2008, the Judgment of District Court in Prishtina Ac.no.76/2007 dated 22 October 2008, and the Resolution of Supreme Court Rev. no. 27/2009 dated 14 May 2012, which was served on the Applicants on 20 June 2012.

Subject matter

3. The subject matter of the Referral has to do with alleged violations of the property rights, guaranteed by the Constitution and the European Convention on Human Rights.
4. The Applicants specified in their Referral the request for review of legality of the abovementioned court decisions.

Legal basis

5. Article 113.7 of the of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the Law) and the Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

6. The Applicants, through their representative, submitted the Referral in the Constitutional Court (hereinafter: the Court) on 31 July 2012.
7. On 13 September 2012, the Court notified the Applicants' Representative, the Supreme Court, the District Court in Prishtina, the Municipal Court in Prishtina, for registration of the Referral.
8. On 4 September 2012, the President by Decision No. GJR 70/12 appointed Mr. sc. Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President, by Decision No. K.SH.70/12 appointed the Review Panel composed of judges: Robert Carolan (presiding), Altay Suroy (member) and Prof. dr. Enver Hasani (member).
9. On 17 October 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 13 November 2006, the Municipal Court in Prishtina (Judgment C. no. 2057/2005) approved as grounded the claim of Mr. Ramush Rrahmani (claimant) and obliged the Applicants (the respondents) to hand over to possession the immovable property registered in the possession list 809 CO in Hajvali, the parcel no. 875, with arable land of III class, with area of 0.66,02 hectares. The statement of claim of the claimant, who requested that co-ownership from ½ part of the immovable property above is recognized to them, was rejected as ungrounded.
11. On 22 October 2008, the District Court in Prishtina (Resolution Ac. no. 76/2007), rejected as ungrounded the appeal filed by the Applicants and confirmed the Judgment

of Municipal Court in Prishtina C. no. 2057/2005 dated 13 October 2006, which is related with the said disputed immovable property.

12. Against the Resolution Ac. no. 76/2007, of 22 October 2008, the Applicants, within legal time limit, have exhausted the extraordinary legal remedy, therefore they filed revision in the Supreme Court, as Applicants claim, because of essential violations of the provisions of the contested procedure and erroneous application of the substantive law.
13. On 14 May 2012, the Supreme Court, (Judgment Rev.no.27/2009), reviewed the revision filed by the Applicants, which was filed against the decision of the District Court in Prishtina Ac. no. 76/2007, of 22 October 2008, whereby rejected as ungrounded the revision filed, with the reasoning that the second instance determined in a complete and correct manner the factual findings and correctly applied the substantive law, when it adjudicated that the request of Applicants was ungrounded.

Applicant's Allegations

14. The Applicants claim that, all court instances by their decisions have violated their constitutional rights, but they have not specified the constitutional rights.

Preliminary assessment of the admissibility of the Referral

15. The Court, first assesses whether the applicants have met the criteria for admissibility, provided for in the Constitution and further specified in the Law and the Rules of Procedure. From the Applicants' submissions, the Court understood that it is a property dispute, which in the Constitution is underlined in Article 46 [Protection of Property].
16. Article 46 of the Constitution determines in a specific way that:
 1. *The right to own property is guaranteed.*
 2. *Use of property is regulated by law in accordance with the public interest.*
 3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
 4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
17. However, when reviewing whether it is supported by evidence the admissibility criteria of the Referral, the Court notes that Article 48 of the Law on Constitutional Court provides that: "*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.*"
18. The fact that Applicants remain unsatisfied with the court decisions, does not mean that the same should address their dissatisfactions in relation to the disputed issue through a constitutional complaint by filing an appeal with the Constitutional Court. In

order to be able to interfere, the Court reiterates that the case should be built on constitutional grounds.

19. On the other hand, the Rule 36.2 of the Rules of Procedure provides that:

“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

d) when the Applicant does not sufficiently substantiate his claim”

20. Finally, Article 46 of the Law determines that *“The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitutional, if it determines that all legal requirements have been met.”*
21. In this respect, the Applicants do not show why and how the Supreme Court violated their rights, guaranteed by the Constitution and the European Convention nor have they provided evidence for the alleged violations of the constitutional rights.
22. The Court reiterates that 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 Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, in this case. 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)
23. The Constitutional Court only can review whether the evidence before courts and other bodies were presented in a correct manner and whether the proceedings in general, viewed in their entirety, were conducted in such a manner so that the Applicant had fair trial (see among other authorities, the Report of European Commission on Human Rights in case Edwards against United Kingdom, Request No. 13071/87, approved on 10 July 1991).
24. In fact, the Applicants did not support their allegations on constitutional grounds, by indicating why and how the Supreme Court violated their rights guaranteed by the Constitution and European Convention, and they failed to provide evidence that their rights and freedoms have been violated by the Supreme Court and other court instances. Therefore, the Constitutional Court cannot find why and how the relevant proceedings in the Supreme Court were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub against Lithuania, Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
25. From the abovementioned reasons, the Court finds that the Referral does not meet the criteria of Article 48 of the Law and the Rule 36.2 (b) and (d) of the Rules of Procedure, therefore, as such is manifestly ill-founded and, pursuant to Article 46 of the Law, it cannot be received and processed.
26. Consequently, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and the Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

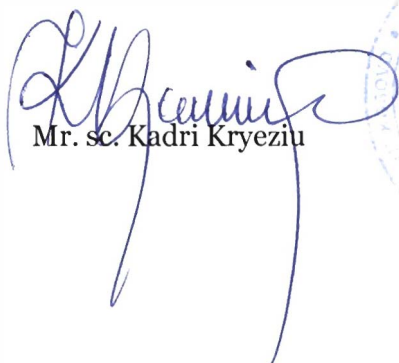
FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 and 48 of the Law on the Constitutional Court, Rule 36.2 (b) and (d) of the Rules of Procedure, on 17 October 2012, unanimously:

DECIDES

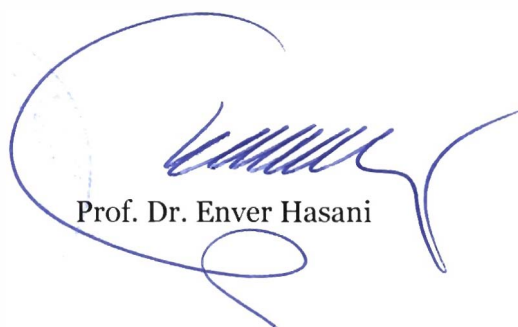
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur



Mr. sc. Kadri Kryeziu

President of the Constitutional Court



Prof. Dr. Enver Hasani