



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 6 April 2016
Ref. no.:RK914/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI72/15

Applicant

Selim Hasani

**Constitutional review of Judgment Rev. No. 51/2015 of the Supreme
Court of 2 April 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Selim Hasani, who is represented by Mr. Zef Delhysa, a lawyer from Prizren.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. No. 51/2015, of 2 April 2015, by which the Applicant's request for revision against the Judgment of the Court of Appeal (Ac. no. 542/2014 of 17 November 2014) was rejected as ungrounded.
3. The challenged decision was served on the Applicant on 21 May 2015.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which the Applicant alleges that it violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair hearing] of the European Convention on Human Rights (hereinafter: ECHR), and Article 1 of the Protocol No. 1 to the ECHR and Article 17 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of Law No. 03/L-121 on the 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

6. On 5 June 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 August 2015 the President of the Court, by Decision No. GJR. KI72/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI72/15, appointed the Review Panel composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 18 August 2015 the Court informed the Applicant of the registration of the Referral and requested him to present the power of attorney for representation before the Court. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 23 September 2015, the Applicant submitted to the Court the requested power of attorney.
10. On 15 March 2016, 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. The Applicant's father died in 1974. The Applicant was a resident of Albania at that time. On an unspecified date, the Applicant's brother was recognized the sole heir, and immovable properties in village Gërgoc came to be inherited by his brother.
12. Following the death of the Applicant's brother in 1997, an immovable property in Prizren came to be inherited by his spouse and children. After 1999 the Applicant returned to Kosovo.
13. On 19 October 2004, based on inheritance right the Applicant filed a claim with the Municipal Court in Prizren requesting confirmation of ownership over the immovable property in Prizren. The Applicant claimed that this immovable property in Prizren was bought with the money of the sale of immovable properties in village Gërgoc.
14. On 8 November 2004, the Applicant filed a proposal with the Municipal Court in Prizren to impose an interim measure, namely to prohibit the respondent party (the heirs of his deceased brother) to alienate the immovable property until the Municipal Court in Prizren renders a final decision.
15. On 25 January 2005, the Municipal Court in Prizren (Decision, C. No. 1448/04) decided to approve the Applicant's proposal for interim measure.
16. On 24 May 2006, the heirs of the Applicant's brother concluded a sale purchase contract with a third party. This sale purchase contract was confirmed by the Municipal Court in Prizren (Decision, Leg. No. 2502/2006 of 24 May 2006).
17. On 13 July 2006, the Applicant specified his statement of claim by requesting the Municipal Court to annul the aforementioned sale purchase contract concluded between his brother's heirs and the third party (respondent party) and declare the Applicant as a co-owner of the immovable property in Prizren.
18. On 10 September 2013, the Basic Court in Prizren (Judgment, C. No. 146/10) rejected the Applicant's claim for annulment of the sales purchase contract and confirmation of co-ownership as ungrounded. The Basic Court further decided that the interim measure decided by Decision, C. No. 1448/04 of 25 January 2005 remains in force until the decision of the first instance court becomes final.
19. The Basic Court based on the legal provisions in force (Article 138 of the Law on Inheritance) held that: *"[...] he returned from Albania to Kosovo after the war, in mid-1999, meaning that at that moment he learned about "the sale" of the real estate of the deceased [brother], and about the "purchase" of the disputed real estate in Prizren, while the claim was filed before the court at the end of 2004, which means after the expiry of the subjective period of one (1) year. In addition, based on the case file, it follows that the [Applicant] and deceased [...] are brothers, namely sons of the deceased [...], who died in 1974, which indicates that in this legal dispute the objective time limit of 10 years is*

over, respectively the period of 20 years for mala fide possessor, because according to the above legal provisions, the calculation of time limit for requesting the hereditary estate for the [Applicant] began to run from the moment of the death of his father [...].”

20. Whereas as to the sales purchase contract concluded on 24 May 2006, the Basic Court held that the buyer entered into contractual relationship in a *bona fide* way and that “[...] *this dispute cannot bear the consequences of misunderstandings that exist or have existed between the [Applicant] and [the heirs of the Applicant’s brother].”*
21. In relation to the issue of interim measure, the Court concluded that it is not a duty and obligation of contractual parties to be aware of possible restrictions that may exist on immovable properties. According to the Basic Court the duty and the obligation to respect such restrictions lies on the public authorities, competent for the certification of such contracts.
22. Against the Judgment of the Basic Court in Prizren, the Applicant filed an appeal with the Court of Appeal. In his appeal, the Applicant alleged essential violation of the procedural law, incomplete and erroneous assessment of the factual situation, and erroneous application of the substantive law.
23. On 17 November 2014, the Court of Appeal (Judgment, Ac. No. 542/2014) rejected the Applicant’s appeal as ungrounded and upheld the Judgment of the Basic Court in Prishtina.
24. The Court of Appeal held that the allegations of the Applicant raised in his appeal were already addressed by the first instance court, with the result that the Basic Court correctly assessed the factual situation and correctly applied the procedural and substantive law.
25. The Court of Appeal in its Judgement also confirmed that *“The buyer of this immovable property is the bona fide buyer and he acquires the property right, if he did not know and did not need to know that the seller is not the owner. The buyer of this immovable property acquired ownership on the basis of a valid legal transaction in a bona fide way. In this respect, the appealed allegations appear as irrelevant and ungrounded in this legal matter”*.
26. Against the Judgment of the Court of Appeal, the Applicant filed revision with the Supreme Court, alleging essential violation of the procedural law, incomplete and erroneous assessment of the factual situation, and erroneous application of the substantive law. In addition, the Applicant raised the issue of the interim measure, for which he alleged that it was still in force.
27. On 2 April 2015, the Supreme Court (Judgment, Rev. No. 51/2015) rejected the Applicant’s revision as ungrounded.
28. The Supreme Court found that the lower instance courts based on complete and correct assessment of the factual situation correctly applied the procedural law.

29. As to the application of the substantive law, the Supreme Court based on the provision of the Law on Inheritance confirmed that the Applicant's right to claim inheritance was subject of statutory limitations.
30. Thus, in this relation, the Supreme Court concluded that the lower instance courts also correctly applied the substantive law.
31. As to the Applicant's allegation concerning the issue of interim measure decided by the Municipal Court, the Supreme Court held that the lower instance court correctly applied the provisions on contested procedure, namely that if the court of first instance does not approve the claim, the interim measure remains in force until the decision of the first instance court becomes final.
32. Finally, the Supreme Court concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decisions.

Applicant's Allegations

33. The Applicant alleges that the regular courts violated his right to fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. In this regard, the Applicant claims that his right for equal trial was denied. In addition, the Applicant alleges violation of his right to property. However, the Applicant did not present any facts or explained how and why the aforementioned constitutional rights were violated.
34. In his Referral, the Applicant the Applicant mainly complains about the erroneous application of substantive law by the regular courts. In addition, he also alleges erroneous assessment of the factual situation. In this regard, he claims that the reasoning of Court of Appeal: *"with respect to the rejection of the appeal regarding the request for annulment of the abovementioned contract [sale purchase contract], is even more surprising. Instead of considering that the respondents are 'mala fide', and that they and the court were liable and responsible in terms of 'certification' of unlawful contracts, the second instance court, which is entrusted to ensure the legality and the rule of law, it 'closes eyes' before the unacceptable and unlawful fact, by declaring the buyer 'bona fide' [...]."*
35. The Applicant concludes by requesting the Court to annul the Judgements of the Supreme Court, Court of Appeal and that of the Basic Court in Prizren as unconstitutional and remand the case for retrial.

Admissibility of the Referral

36. In order to be able to adjudicate the Applicant's Referral, the Court has to assess whether the Applicant has met the necessary requirements for admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.

37. The Court notes that the Applicant is an authorized party according to the Constitution, challenges an act of a public authority, namely the Judgment of the Supreme Court, has exhausted the necessary legal remedies and has submitted the referral within the four (4) months period.

38. The applicant has clearly stated the allegedly violated constitutional rights and freedoms and the challenged act as required by 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”.

39. Further, the Court is to assess whether the Applicant has met the required Rules of Procedure, namely 36 (2), which provide:

(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”.

40. As mentioned above, the Applicant alleges violation of his right to fair and impartial trial and his right to property.

41. In this regard, the Court notes that the Applicant has not presented any facts nor has he substantiated his allegation of violation of his right to fair and impartial trial and his right to property. When alleging such constitutional violations, the Applicant must present a reasoned allegation and convincing argument (See case No. KI198/13, Applicant: Privatization Agency of Kosovo, Constitutional Court, Resolution on Inadmissibility of 13 March 2014).

42. In addition, the Court notes that the Applicant does not agree with the assessment of facts and the application of procedural and legal provisions by the regular courts. The assessment of facts and the applicable law are the matters which fall within the scope of legality.

43. In this respect, 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, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).

44. Therefore, the Court does not act as a court of fourth instance in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law

(See case *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

45. As mentioned above, the Supreme Court in its Judgment concluded that based on the correct assessment of the factual situation, the procedure and substantive law were correctly applied.
46. In addition, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear, and after having considered all the proceedings, the Court found that the proceedings before the Basic Court in Prizren and before the Court of Appeal have not been unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
47. Finally, the Court reiterates that the Applicant has not presented any convincing argument to establish that the alleged violations mentioned in the Referral, represent violations of his rights guaranteed by the Constitution (see case, *Vanek v. Republic of Slovakia*, no. 53363/99, ECHR, Decision of 31 May 2005).
48. The Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of his constitutional rights and that the Applicant did not sufficiently substantiate his claim.
49. Therefore, the Referral is manifestly ill-founded and, accordingly, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure, on 15 March 2016, 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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi