



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

Prishtina, 31 March 2014
Ref. No.:RK 584/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI120/13

Applicant

Ismete Veseli

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 60/2012, of 4 June 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Applicant in this Referral is Mrs. Ismete Veseli (hereinafter: Applicant), from the Rogoqica village in Kamenica, duly represented by Lawyer Mr. Mustafë Musa.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. no. 60/2012, of 4 June 2013, served upon the Applicant on 27 June 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 60/2012, for which the applicant claims to have violated her rights guaranteed by the Constitution, thereby unlawfully depriving her of the ownership right over an immoveable property, acquired upon life endowment contract.

Legal basis

4. Article 113.7 of the Constitution of Kosovo (hereinafter: Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56 of the Rules of Procedure of the Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 5 August 2013, the Applicant filed her Referral with the Constitutional Court.
6. On 30 August 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur, and a Review Panel composed of Judges: Snezhana Botusharova (Presiding), and Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 4 October 2013, the Constitutional Court had notified the Applicant and the Supreme Court on registration of Referral.
8. On 14 October 2013, the Court required from the Applicant to submit additional documentation necessary for review of the Referral.
9. On 5 November 2013, the Court received from the Applicant the additional documentation requested.
10. On 20 January 2014, after having considered the report of judge rapporteur, the Review Panel made a recommendation to the full Court on inadmissibility of the Referral

Summary of facts

11. From the documentation attached to the Referral, the Court notes that the Municipal Court in Gjilan had certified the life endowment contract, as no. Vr. No. 1504/08, on 7 April 2008, signed by now the late A. V. from Gjilan and the Applicant, I. V., also from Gjilan, and both parties were at the time of contract signature spouses, and based on this contract, the rights over the immoveable property owned by A. V., after his death would be transferred to the Applicant as compensation for life endowment.

12. On 10 February 2009, the Municipal Court in Gjilan rendered the Judgment C. no. 306/08, by which in item I of the enacting clause rejected the claim suit of claimant Sh. L. from Prishtina (biological daughter of the late A. V.) as ungrounded, by which she had claimed annulment of contract on permanent tenure between now the late A. V. from Gjilan and the Applicant.
13. By item II of the enacting clause of the judgment, the Municipal Court in Gjilan had approved as grounded the claim suit of the claimant, in her second claim, thereby annulling the contract on sale of immoveable property, signed by the Applicant as seller, and F. D. as buyer, certified by the Municipal Court in Gjilan as Vr. no. 4611/08, on 26 August 2008, due to absolute invalidity, because the subject of contract was outside of legal order, since the Municipal Court had earlier rendered a decision imposing an interim measure, thereby prohibiting alienation of such property until conclusion of the dispute, by a final decision.
14. On 28 September 2009, acting upon complaints of both litigating parties, the District Court in Gjilan rendered the Judgment Ac. No. 162/09, thereby quashing the Judgment C. no. 306/08 of the Municipal Court in Gjilan in item I of the enacting clause, thereby ordering the reopening of procedure at the Municipal Court, while upholding item II of the Judgment, and rejecting the complaints of both litigating parties in that part of the judgment.
15. In its reasoning, the District Court had found that the enacting clause and *“the reasoning of the Municipal Court judgment are contradictory”* and that *“a contract on permanent tenure is a public document, and as such, it should have been formally compiled, and be certified by a judge”*.
16. On 21 December 2010, the Municipal Court in Gjilan, in a repeated procedure, in accordance with the judgment of the District Court in Gjilan, rendered the Judgment C. No. 733/2009, thereby approving the claim of claimant Sh. L. from Prishtina, and annulling the contract on permanent tenure, Vr. no. 1504/2008, certified on 07.04.2008.
17. On 26 January 2012, the District Court in Gjilan, rendered the Judgment Ac. no. 60/2011 thereby rejecting as ungrounded the complaint of the Applicant’s attorney.
18. On 4 June 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 60/2012, thereby rejecting as ungrounded the revision filed by the Applicant against the Judgment of the District Court in Gjilan Ac. No. 60/2011 of 26 January 2012.
19. In the reasoning of the Revision Judgment, the Supreme Court, inter alia, found that *“lower instance courts, by properly and fully ascertaining the factual situation, have properly applied material law in finding that the claim suit of the claimant was grounded”*.

Applicant's allegations

20. The Applicant claimed that by judgment of the Supreme Court, and lower instance courts, "*Article 22 of the Constitution of the Republic of Kosovo on protection of property was violated*".
21. The Applicant further claimed that regular courts had failed to apply accurate law in rendering rulings related to this dispute.

Preliminary assessment of admissibility of the Referral

22. To be able to adjudicate on the Referral of the Applicant, the Court must first assess whether the Applicant has met admissibility criteria as provided by the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.
23. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

24. In this regard, the Court notes that the Applicant's referral was filed with the Court by an individual, within the timeline of 4 months as provided by law, and upon exhaustion of legal remedies, and therefore, the Referral is found proper for review by the Constitutional Court.

Review on substantive aspects of the case

25. In its assessment of the substantive aspects of the case, the Court notes that the Applicant disputes the Judgment of the Supreme Court Rev. No. 60/2012 of 4 June 2013, thereby claiming that this judgment and other lower instance judgments have violated her rights as guaranteed by the Constitution.
26. The Court notes that the Applicant had erroneously invoked Article 22 of the Constitution, thereby referring to the guaranteed right to property, since the Article 22 of the Constitution in fact refers to direct application of international treaties and instruments, while property rights are guaranteed by Article 46 of the Constitution.
27. Independently of the legal qualification of the constitutional provisions claimed by the Applicant to have been violated, the Court finds that the Applicant in fact disagrees with the final judgment of the Supreme Court in her case before this Court.
28. The Court wishes to reiterate that the sole fact of Applicant's being dissatisfied with the case outcome cannot serve as her entitlement to raise an arguable application on violation of Constitution provisions (see, *mutatis mutandis*, ECtHR judgment, Application no. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, or Constitutional Court Decision, case KI128/12, of 12 July 2013, of

Applicant Shaban Hoxha, in a request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

29. In this regard, the Court notes that the Applicant has in no manner presented facts on how the alleged violation of the constitutional provision occurred, in what stage of judicial proceeding, or eventual arbitrary elements in rulings disputed, and that she only claims that the law on inheritance was erroneously applied instead of the law on family, and as a consequence, the Applicant lost her right to property acquired by contract on permanent tenure.
30. In referring to this allegation, the Court emphasizes the fact that the Supreme Court, in the reasoning of the Judgment Rev. no. 60/2012 of 4 June 2013 has noted that “*lower instance court,... (.....) ..., have properly applied material law*”, and therefore, in these circumstances, the Court cannot find that there were violations of human rights to the detriment of the Applicant.
31. Related to the above, one must remember that one of the foundation principles of constitutional review is the principle of subsidiarity. In the special context of the Constitutional Court, this implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the domestic judicial authorities, and not directly or immediately to the Constitutional Court (see *Scordino vs. Italy*, no. 1, [DHM], § 140), and therefore, in this regard, the Court notes that the matter addressed by the Applicant has been effectively reviewed by the Supreme Court, thereby providing reasons and arguments on the ruling rendered.
32. The Court is not a fact finding court , and the ascertainment of proper and full factual situation is in the jurisdiction of the regular courts, in this case the Supreme Court and lower instance courts, and the role of this Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, and therefore, it cannot act “as a fourth instance court” (see, *mutatis mutandis*, i.a., *Akdivar vs. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
33. Furthermore, to declare a public authority decision as unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that “the public authority decision, as such, would be an indicator of a violation of a request to fair trial, and if the unfairness of that decision is so evident that the decision may be considered as extremely arbitrary” (see ECtHR, *Khamidov vs. Russia*, Judgment of 15 November 2007, § 175).
34. In these circumstances, the Court finds that the facts submitted by the Applicant in no manner justify the allegation of violation of a constitutional right; therefore, it cannot be concluded that the Referral was grounded and in compliance with Rule 36, paragraph 2, item b, the Court hereby finds that the Referral must be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 of the Rules of Procedure, the Constitutional Court in its session held on 20 January 2014 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


Robert Carolan

President of the Constitutional Court


Prof. Dr. Enver Hasani

