



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

Prishtina, 23 June 2014
Ref. no.: RK 646/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI193/13 and KI213/13

Applicant

New Company Agricultural land SHKABAJ L.L.C.

**Constitutional review of the Decision of the Supreme Court of Kosovo,
Rev. no. 229/2012, of 10 June 2013 and
the Decision of the Supreme Court of Kosovo,
Rev. no. 70/2013, of 12 July 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

Applicant

1. The Referral was submitted by legal entity “New Company Agricultural land Shkabaj L.L.C.” (hereinafter: the Applicant), which before the Constitutional Court of Kosovo is represented by the lawyer, Mr. Gafurr Elshani.

Challenged decision

2. The Applicant challenges two decisions of the Supreme Court of Kosovo, namely:
 - The Decision of the Supreme Court of Kosovo Rev. no. 229/2012, of 10 June 2013, which was served on the Applicant on 15 July 2013, and
 - The Decision of the Supreme Court of Kosovo Rev. no. 70/2013, of 12 July 2013, which was served on the Applicant on 23 August 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 229/2012, of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013, by which, according to Applicant's allegations, were violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution (hereinafter: the Constitution); Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (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 11 November 2013, the Applicant submitted the Referral KI193/13 to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 November 2013, the Applicant submitted the Referral KI213/13 to the Court.
7. On 27 January 2014, the President of the Court rendered the decision on the joinder of the cases KI193/13 and KI213/13 and appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
8. On 5 February 2014, the Constitutional Court forwarded to the Supreme Court the copy of the Referral and informed the Applicant that the procedure of the constitutional review of the Decision, as per joined cases KI193/13 and KI213/13 has been initiated.
9. On 5 May 2014, after having reviewed of the report of the Judge Rapporteur Kadri Kryeziu, the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts for Referral KI193/13

10. On 29 December 2010, the Applicant filed a claim with the Municipal Court in Prishtina (the current Basic Court) for vacation of the immovable property and compensation for the lost profit, with a justification that the respondent Azem Sallahu, without permit and authorization entered into possession and unlawful use and did not vacate the immovable property, P-71914056-00161-3, the parcel agricultural land, at the place called "Dragodan - Kodra", in a surface area of 10800 m², Cadastral Municipality Prishtina.
11. On 13 October 2011, the Municipal Court in Prishtina, by Decision C. no. 2945/10, is declared *"incompetent on this legal matter and the respondent is instructed that regarding this initiates the proceedings in the Special Chamber of Supreme Court of Kosovo."*
12. On 1 November 2011, the Applicant filed an appeal against the Decision of the Municipal Court in Prishtina, C. no. 2945/10, of 13 October 2011, due to substantial violations of the contested procedure provisions and erroneous application of the material law.
13. On 24 January 2012, the District Court in Prishtina, by Decision Ac. no. 1432/2011, *"The appeal of the authorized representative of the claimant New Company Agricultural Land Shkabaj IS REJECTED as ungrounded, whereas the ruling of Municipal Court in Prishtina, C. no. 2945/2010 of 13.10.2011 IS UPHELD."*
14. On 16 March 2012, the Applicant submitted the request to the Supreme Court for issuing legal stance regarding the jurisdiction.
15. On 27 March 2012, the President of the Supreme Court in Response Agj. No. K136/2012, to the request for issuing legal stance, regarding the jurisdiction, states as the following:

"The issue of jurisdiction is regulated by law and this court cannot take a legal stance on every disagreement of parties by court decisions, you have had legal opportunities and ways to challenge such decision, i.e. to request the initiation of the procedure for protection of legality or to file a revision if the law in the concrete case enabled such thing and then this court as the last authority would decide in relation to this matter. As regards to jurisdiction, if the court considers that there is no territorial or real jurisdiction, then it is declared incompetent and submits the case to the court for which thinks it is competent, and if the court to which was proceeded the case, thinks that it is not its jurisdiction it opens the conflict of jurisdiction, which is resolved by higher court; from this it results that no legal requirement for legal stances is fulfilled, but the jurisdiction is resolved by higher court, in regular procedure provided by law."
16. On 5 April 2012, against the Decision of the Municipal Court in Prishtina, C. no. 2945/10 of 13 October 2011 and the Decision of the District Court in Prishtina Ac. no. 1432/2011 of 24 January 2012, the Applicant filed a revision due to

substantial violation of the contested procedure provisions and erroneous application of the material law.

17. On 10 June 2013, the Supreme Court of Kosovo, by Decision Rev. no. 229/2012, *“Revision of the representative of the claimant filed against the Ruling of District Court in Prishtina Ac. no. 1432/11 of 24.01.2012, is rejected as inadmissible” with the following reasoning:*

“Regarding the revision of the claimant’s representative, the Supreme Court of Kosovo, concluded that the revision is inadmissible since pursuant to Article 228, paragraph 1 of LCP, the parties can file a revision against final rulings by which is finalized the proceedings of the second instance court, by which this court was declared incompetent on this legal matter, the revision was not allowed since by this is not completed the contested procedure in the final form “.

Summary of facts for Referral KI213/13

18. On 22 September 2010, the Applicant filed a claim with the Municipal Court in Prishtina (the current Basic Court) for vacation from the immovable property and compensation for the lost profit, with a justification that the respondent Fehmi Sahiti, without permit and authorization entered into possession and unlawful use and did not vacate the immovable property, P-72614055-01832, the parcel agricultural land, at the place called “Dragodan“, in a surface area of 60 are, Cadastral Municipality Obiliq.
19. On 18 October 2011, the Municipal Court in Prishtina, by Decision C. no. 2029/10 is declared, *“incompetent for this legal matter and the respondent is instructed that with regards to this initiates the proceedings in the Special Chamber of Supreme Court of Kosovo.”*
20. On 18 November 2011, the Applicant filed an appeal against the Decision of the Municipal Court in Prishtina C. no. 2029/10, of 18 October 2011, due to substantial violations of the contested procedure provisions and erroneous application of the material law.
21. On 28 September 2012, the District Court in Prishtina, by Decision Ac. no. 923/2012, *“The appeal of the authorized representative of the claimant New Company Agricultural Land Shkabaj IS REJECTED as ungrounded, whereas the ruling of Municipal Court in Prishtina, C. no. 2029/2010 of 13.10.2011 IS UPHELD.”*
22. On 16 March 2012, the Applicant submitted the request to the Supreme Court for issuing legal stance regarding the jurisdiction.
23. On 27 March 2012, the President of the Supreme Court in Response Agj. No. K136/2012, to the request for issuing legal stance, regarding the jurisdiction, states as the following:

“The issue of jurisdiction is regulated by law and this court cannot take a legal stance on every disagreement of parties by court decisions, you have

had legal opportunities and ways to challenge such decision, i.e. to request the initiation of the procedure for protection of legality or to file a revision if the law in the concrete case enabled such thing and then this court as the last authority would decide in relation to this matter. As regards to jurisdiction, if the court considers that there is no territorial or real jurisdiction then it is declared incompetent and submits the case to the court for which thinks it is competent, and if the court to which was proceeded the case, thinks that it is not its jurisdiction it opens the conflict of jurisdiction, which is resolved by higher court; from this it results that no legal requirement for legal stances is fulfilled, but the jurisdiction is resolved by higher court, in regular procedure provided by law.”

24. On 12 November 2012, against the Decision of the Municipal Court in Prishtina, C. no. 2029/10 of 18 October 2011 and the Decision of the District Court in Prishtina Ac. no. 923/2011 of 28 September 2012, the Applicant filed revision due to substantial violation of the contested procedure provisions and erroneous application of the material law.
25. On 12 July 2013, the Supreme Court of Kosovo, by Decision Rev. no. 70/2013, *“Revision of the representative of the claimant filed against the Ruling of District Court in Prishtina Ac. no. 923/12 of 28 September 2012, is rejected as inadmissible” with the following reasoning:*

“Regarding the revision of the claimant’s representative, the Supreme Court of Kosovo, concluded that the revision is inadmissible since pursuant to Article 228, paragraph 1 of LCP, the parties can file a revision against final rulings by which is finalized the proceedings of the second instance court, by which this court was declared incompetent for this legal matter, the revision was not allowed since by this is not finalized the contested procedure in the final form“.

Applicant’s allegations

26. The Applicant alleges that Decisions of the Supreme Court of Kosovo Rev. no. 229/2012, of 10 June 2013 and Rev. no. 70/2013, of 12 July 2013, violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo.
27. The Applicant considers that *“By the abovementioned decisions the Applicant considers that its rights to fair and impartial trial were violated, since the parties in proceeding were not treated equally and that the court have not reviewed the evidence and the facts that the claimant offered – Company Agricultural Land Shkabaj LLC, and moreover by the Ruling of revision Rev.229/2012 of 10.06.2013 was violated the right to extraordinary legal remedy because even the Court in page 2 of reasoning of judgment of Revision erroneously interprets the Article 228, paragraph 1, since the Ruling Ac.no.1432/2011 is final and as regards to the matter of contest on competency is completed the proceeding. In the concrete case, the proceedings in the Courts were not fair and in most of the cases were impacted by each other without analyzing the facts independently”.*

28. The Applicant addresses the Constitutional Court by the following request:

“... that Constitutional Court of the Republic of Kosovo concludes that final Ruling of the Supreme Court of Kosovo Rev.no.229/2012 of 10.06.2013 and previous judgments that foreran the same contain violation of Constitution and applicable Law regarding the fair and impartial trial to the detriment of appellant and by declaring incompetent the Municipal Court in Prishtina, even though by law such thing is not guaranteed. The same rulings must be abrogated and the case to be retried in impartial manner and in compliance with evidence.”

Assessment of admissibility of the Referral

29. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

30. In this respect, the Court refers to Articles 21.4 and 113.7 of the Constitution, which provide:

“4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable. “.

“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”.

31. As well as Article 47 of the Law on Constitutional Court of the Republic of Kosovo, which provides:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

32. Furthermore, the Court refers to Rule 36 (1) a) of the Rules of Procedure, which provides:

*(1) “The Court may only deal with Referrals if:
a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted...”.*

33. Taking this into account, on the basis of documentation submitted to the Constitutional Court by the Applicant, the Court notes that by the Decisions of the Supreme Court of Kosovo, Rev. no. 229/2012, of 10 June 2013, and Rev. no. 70/2013, of 12 July 2013 "... against the ruling by which this court is declared incompetent for this legal matter, the revision was not allowed since by this is not finalized the contested procedure in the final form.”At the same time, the cases were remanded to the Special Chamber of the Supreme Court for retrial,

in order that the competent court can decide on the subject matter of this dispute.

34. The Court wishes to reiterate that the rule of exhaustion of legal remedies exists to provide relevant authorities, including the courts, with an opportunity to prevent or rectify the alleged violations of the Constitution. The rule is based upon the assumption that the legal order in Kosovo shall provide effective legal remedies to violations of constitutional rights (see, *mutatis mutandis* ECtHR, *Selmouni vs. France*, no. 25803/94, decision of 28 July 1999).
35. This Court has provided the same reasoning when rendering the Decision of 27 January 2010, on inadmissibility, on the basis of non-exhaustion of all legal remedies in the case AAB-RIINVEST University LLC, Prishtina vs. Government of the Republic of Kosovo, case no. KI41/09, and the Decision of 23 March 2010, in the case *Mimoza Kusari-Lila vs. Central Election Commission*, Case no. KI73/09.
36. Therefore, the Court concludes that the Applicant has not exhausted all legal remedies provided by law, for it to be able to file a Referral with the Constitutional Court, and therefore, it must declare the Referral inadmissible, in compliance with Article 47.2 of the Law, and Rule 36 (1) a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 36 (1) a) of the Rules of Procedure, on 5 May 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani