



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

Pristina, 28 March 2014
Ref.no.: RK 581/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI195/13

Applicant

Asllan Krasniqi

**Constitutional Review of the Judgment, Rev. no. 126/2012, of the
Supreme Court of Kosovo, dated 2 August 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. The Referral was submitted by Mr. Asllan Krasniqi (hereinafter: “the Applicant”) residing in Gjakova.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 126/2012 dated 2 August 2013, which was served on him on 10 October 2013.

Subject matter

3. The Subject matter is the constitutional review of the Judgment of the Supreme Court Rev. no. 126/12 dated 2 August 2013. By that judgment the Applicant's Revision, submitted against the judgment of the District Court in Peja, Ac.No.470/2011 of 19 March 2012, related to the recognition of his co-ownership rights on the real estate, was rejected as ungrounded.

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution, Article 47 of the 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 Court

5. On 12 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court").
6. On 2 December 2013, the President of the Court with Decision No. GJR. KI195/13 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President of the Court by Decision No. KSH. KI195/13 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 11 December 2013, the Court notified the Applicant and requested him to submit the judgment of the District Court in Peja Ac. No. 470/2011 dated 19 March 2012 and the judgment of the Municipal Court in Gjakova C. No. 11/2008 dated 21 April 2011.
8. Also on 11 December 2013, the Court notified the Supreme Court of Kosovo on the registration of the Referral.
9. On 20 December 2013, the Applicant submitted to the Court copies of the requested judgments.
10. On 21 January 2014, 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 did not describe the facts of the case. Instead he asked the Court to consider all the submissions he gave in the proceedings before the regular courts. In that respect he attached copies of the relevant judgments.
12. From these judgments the following may be asserted:
13. On an unspecified date, the Applicant together with his four brothers initiated a civil proceedings against I.K. for recognition of their co-ownership rights on the real estate in the surface area of 215.5 m² registered in the cadastral plot no 189/2 CZ Rogove. The Applicant and his brothers also requested the handing over of the possession of the disputed real estate.
14. On 21 April 2011, the Municipal Court in Gjakova issued the judgment whereby the Applicant's petition was rejected as ungrounded.
15. The Municipal Court rejected the Applicant's petition because it found that the agreement on the physical division of the property was signed between the Applicant's deceased father and the I. K. deceased father (who were brothers), and verified by the Municipal Court in Prizren on 30 December 1963, thereby providing valid legal ground to acquire the right of property, pursuant to Article 20 of the Law on Basic Property Relations.
16. The Applicant and his brothers submitted an appeal to the District court in Peja.
17. On 19 March 2012, the District Court in Peja by judgment Ac.no.470/2011 rejected the aforementioned appeal. In the reasoning the District Court stated, inter alia, *"the legal stance of the first instance court was admitted by the second instance court as correct and based on law, because the challenged judgment does not contain substantial violations of the contested procedure provisions under Article 182.2 of LCP, which the second instance court observes ex-officio pursuant to Article 194 of LCP. The factual situation, which was determined by the first instance court, is not put into question in the appealed allegations. By the appeal are repeated and filed issues that are assessed by the first instance court during the review of legal contested relation and for which the first instance court, provided sufficient legal and factual reasons and based on law."*
18. Subsequently, the Applicant and his brothers submitted a revision to the Supreme Court. They alleged that the District Court violated provisions of the Law on Civil Procedure (LCP) in particular Article 188 of the LCP, and that the District Court in Peja erroneously applied material law.
19. On 2 August 2013, the Supreme Court in Kosovo issued the judgement (Rev. 126/2012) and rejected the aforementioned revision.
20. The Supreme Court in the reasoning reiterated that *"The fact that the respondent's immovable property is larger was taken into account by the first instance court, however considering that that the division was performed on the grounds of the quality and the position of the plots, and the predecessors'*

of the litigating parties agreed to it, and they entered into possession without any remarks by the other party, and the successors – here the litigating parties continued the use and possession since 1963 and on, whereas the claimants did not challenge it until 2008 when they submitted the claim, ...”

21. The Supreme Court further stated the following *“In the claimants’ Revision it is only generally stated that the Judgments of lower instance courts contain essential violations of the legal provision pursuant to Article 182, paragraph 2, item (n) of the LCP, without specifically explaining those violations, ..., this Court finds that the Revision claims pertaining to the essential violations of the above mentioned legal provisions are not grounded. In the Revision it is mentioned that the challenged Judgment was rendered pursuant on the ground of the violation of the legal provision pursuant to Article 188 of the LCP. The Supreme Court reviewed this allegation but the same provision pertains to the response to the appeal and is not related to the review pursuant to Revision.”*

Applicant’s Allegation

22. The Applicant alleges that his constitutional rights to property and fair and impartial trial have been violated by the judgment of the Municipal Court in Gjakova (C. no. 11/2008 dated 21 April 2011) and the judgement of the District Court in Peja (Ac. no. 470/2011 dated 19 March 2012). He further alleges that the Supreme Court in Kosovo did not rectify the violation of his human rights guaranteed by the Constitution.
23. The Applicant states the following: *“My rights specified by Articles 21, 22, 31, 46 of the Constitution of the Republic of Kosovo have been violated and Articles 5 and 6 of the ECHR.”*

Assessment of the admissibility of the Referral

24. First of all, in order to be able to adjudicate the Applicant’s Referral, the Court has to first examine whether the Applicant has met the admissibility requirements which are foreseen by the Constitution and further specified in the Law and the Rules of Procedure.
25. The Court notes that the Applicant has neither described the facts of the case nor has he substantiated his complaints. Instead he has only argued that his submissions were not taken into account and therefore claiming that his human rights, most notably, to property and fair trial have been violated.
26. In this regard, the Court takes into account Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded.”
27. The Court emphasizes 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 it may have infringed rights and freedoms protected by the Constitution (constitutionality).

28. In this connection, the Constitutional Court reiterates that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. 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, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
29. The Constitutional Court notes that the Applicant has used all legal remedies prescribed by the Law on Contentious Procedure, by submitting the revision against the Judgment of the District Court in Peja and that the Supreme Court took this into account and indeed answered his appeals on the points of law.
30. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence of such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
32. Accordingly, the Court finds that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, in its session held on 21 January 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur

President of the Constitutional Court


Snezhana Botusharova


Prof. Dr. Enver Hasani

