



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

Pristina 14 March 2014
Ref.no.: RK 575/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI197/13

Applicant

N.T.P. “Beni Dona”

**Constitutional Review of the Judgment of the Supreme Court, Rev. Mlc.
no. 141/2012, dated 18 September 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 is the Company “Beni Dona”, represented by Mr. Muhamet Shala, a practicing lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. Mlc. no. 141/2012 of 18 September 2013, which was served on the Applicant on 5 November 2013.

Subject matter

3. The Applicant requests the constitutional review of the Judgment of the Supreme Court, which allegedly violates Articles 3.2 [Equality Before the Law], 7.1 [Values], 16.3 [Supremacy of the Constitution], 21.4 [General Principles] and 22.2 [Direct Applicability of International Agreements and Instruments] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of 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 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 3 December 2013, the President, by Decision No. GJR. KI197/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President, by Decision No. KSH. KI197/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 9 December 2013, the Court communicated the Referral to the Supreme Court, the Office of the Chief State Public Prosecutor in Pristina and the Municipality of Podujeva.
8. On 21 January 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

9. On 16 September 1996, the "Beni Dona" Company owned by the Applicant, entered into a contract with the Municipality of Podujeva for the lease of the premises of the former Hotel "Llab" in Podujeva for a period of 10 years, on the condition that the "Beni Dona" Company would rehabilitate it at its own costs. After the expiration of the lease contract, the Municipality of Podujeva would decide on the extension or termination of the lease contract to the effect that, if the Municipality decided to terminate the lease contract, it would have to return

the amount spent on the rehabilitation of the Hotel to the “Beni Dona” Company.

10. From 2002 to 2005, upon the request of the Municipality of Podujeva, the “Beni Dona” Company paid, in addition to the rehabilitation costs, also property taxes on the leased property.
11. Since the Municipality of Podujeva did not fulfill their contractual obligations, on 6 June 2007, the Applicant filed a claim against the Municipality with the Municipal Court of Podujeva, requesting the court to rule that either the Municipality returns their investment, or to continue the use by the Company of the leased premises for ten years.
12. On 9 November 2007, the Municipal Court of Podujeva (Judgment C. no. 155/2007) admitted the claim of the Applicant, ordering the Municipality of Podujeva to either return the invested funds to the Company or to continue the lease contract for another ten years.
13. On 9 November 2007, the Municipality appealed to the District Court of Pristina against this Judgment.
14. On 28 May 2008, the District Court of Pristina (Judgment Ac. no. 28/2008) rejected the appeal of the Municipality as ungrounded, maintaining that the enacting clause of the judgment of the Municipal Court was comprehensible and suitable for execution and that, in its reasoning, the court had provided complete and comprehensible reasons on all facts of decisive importance and, therefore, the reasoning provided was fully compatible with the content of the evidence examined.
15. Within the legal deadline, the Municipality of Podujeva filed a request for Revision against the judgments of the Municipal and District Court with the Supreme Court. At the same time, the Public Prosecutor filed a request for protection of legality with the same court, proposing to quash the judgments of the lower instance courts on the basis of substantial violations of the contested procedure provisions and erroneous application of material law, and to re-open the case at the first instance court.
16. On 3 September 2010, the Supreme Court granted the request for protection of legality submitted by the Public Prosecutor as well as the Revision filed by the Municipality of Podujeva, ruling that the Municipality of Podujeva was not now legally responsible for a lease contract between the Applicant and the former Municipal Assembly of Podujeva signed in 1996. The Supreme Court found that the lower instance courts had erroneously applied the material law.
17. On 12 October 2010, the Applicant submitted the Referral to the Court complaining about the Judgment of the Supreme Court. The Constitutional Court, on 12 April 2012, declared null and void the Judgment of the Supreme Court of Kosovo, Rev. no. 406/2008 of 3 September 2010, because the Judgment of the Supreme Court had violated the Applicant’s procedural rights under Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6.1 (Right to fair trial) of the European Convention on Human Rights.

Thus, the Constitutional Court remanded the case to the Supreme Court for reconsideration in conformity with the judgment of this Court.

18. On 18 September 2013, the Supreme Court (Judgment Mlc. No. 141/2012) complied with the Judgment of the Constitutional Court and reopened the proceedings regarding the request for protection of legality submitted by the Public Prosecutor, as well as the Revision filed by the Municipality of Podujeva. The Supreme Court ruled that the Municipality of Podujeva was not now legally responsible for a lease contract between the Applicant and the former Municipal Assembly of Podujeva signed in 1996. However, the Supreme Court of Kosovo, following the recommendations of the Constitutional Court of Kosovo, as specified in Constitutional Court Judgment No. KI103/2010 of 12 April 2012, also notified the litigating parties, the State Prosecutor of Kosovo, claimant Shaban Mustafa – owner of “Beni-Dona”, the authorized representative attorney Muhamet Shala, and respondent’s representative public attorney Faik Rama.

Applicant’s allegations

19. The Applicant alleges that the reasoning of the Supreme Court is erroneous, in that it concluded that the Company had entered into a contract with the former Municipality of Podujeva in 1996, which, after the war, was not succeeded by the present Municipality of Podujeva and, therefore, that the present Municipality was not bound to assume the obligations of the 1996 contract. The Applicant argues that, the Municipality of Podujeva was, indeed, not the political successor to the former Municipality, but had enjoyed the legal succession to that Municipality in terms of rights and obligations, as it had been established on the same premises and managed the same immovable properties as before and, since it had admitted that it was the owner of the leased premises, it had to also accept the obligations connected to this facility.

Admissibility of the Referral

20. The Court first observes that, in order for the Referral to be admissible, the Applicant must show that it has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
21. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which provides: *“The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*
22. In respect to the present case, the Applicant alleges that the Supreme Court, with its Judgment of 18 September 2013, wrongfully applied the material law because according to the Applicant there is a legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo.
23. In this respect, 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the

Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).

24. The Court notes that the Applicant's referral concerns a question of legality and not a constitutional question, because the allegation of the Applicant is in regard to whether it was correct for the Supreme Court to conclude that there is no legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo.
25. In respect to the Judgment of the Supreme Court, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by that public authority. Therefore, the Court cannot conclude that the relevant proceedings before the Supreme Court were in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).
26. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the Supreme Court that there is no legal succession between the former municipality of Podujeva and the one constituted after the armed conflict in Kosovo has infringed his rights and freedoms protected by the Constitution.
27. In these circumstances, the Court concludes that the Referral, pursuant to Rule 36 (1) c) of the Rules of Procedure, is inadmissible, because it is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) c) and Rule 56.2 of the Rules of Procedure, on 21 January 2014, unanimously

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani