



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

Prishtina, 25 April 2014
Ref. no.: RK567/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI205/13

Applicant

Feti Islami

**Constitutional Review of the Decision of the Supreme Court of Kosovo,
Rev. no. 85/2012, of 03 June 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was filed by Mr. Feti Islami (hereinafter: the Applicant), from the Municipality of Peja.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo, Rev. No. 85/2012, of 03 June 2013, served upon him on 26 August 2013.

Subject matter

3. The subject matter is constitutional review of the decision of the Supreme Court of Kosovo, Rev.No.85/2012, of 03 June 2013, which according to the Applicant violates Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 41 [Right of Access to Public Documents], 46 [Protection of Property], 48 [Freedom of Art and Science] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol to this Convention (hereinafter: ECHR).

Legal basis

4. The Referral is based upon Article 113.7 of the Constitution of the Republic of Kosovo (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 Court

5. On 15 November 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 December 2013, the President of the Court, by Decision No. GJR.KI205/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH.KI205/13 appointed the Review Panel, composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 17 January 2014, the Constitutional Court forwarded a copy of the Referral to the Supreme Court of Kosovo, and notified the Applicant that the procedure of constitutional review has been initiated upon the case no. KI205/13.
8. On 13 March 2014, after having considered the Report of the Judge Rapporteur, the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 26 May 2006, by the Judgment of the Municipal Court in Peja, C. no. 195/05, the claim suit of the claimant was rejected in entirety as ungrounded, by which the first claimant Feti Islami, and the second claimant N. I., had

requested to confirm the right of use on 5/20 ideal shares, while the other claimants: B. Sh., M. I., Z. I., S. I. and M. D., each to 2/20 ideal shares to a construction parcel in the city.

10. The Judgment of the Municipal Court in Peja, C.no.195/05, of 26 May 2006, was upheld by the Judgment of the District Court, Ac. no. 306/06, of 22 May 2008, and also by the Judgment of the Supreme Court of Kosovo in Prishtina, Rev.no.395/2008, of 02 June 2009, by which the revision of claimants, filed against the Judgment of the District Court in Peja, was rejected as ungrounded.
11. On 08 June 2010, the authorized representative of the claimants filed a proposal for repetition of procedure concluded upon the judgments mentioned, in the meaning of Articles 234 and 235 of the LCP, thereby proposing that repetition of procedure be allowed, so that the judgments of the Municipal Court in Peja, and the District Court in Peja be quashed, so that the case is remanded for retrial to the first instance court, but to another trial panel.
12. On 18 October 2010, the Supreme Court of Kosovo, by act KCRJ. no. 1/2010 returned the case files to the Municipal Court in Peja, in compliance with the Article 236 of the LCP, which provides that *"the proposal for repetition of procedure is presented always to the Court that rendered the first instance decision, but in terms of the proposal for repetition of procedure, the second instance court should rule, respectively a single judge, who did not take part in rendering prior decisions against which the repetition of procedure is requested"*.
13. On 22 September 2011, the Municipal Court in Peja, by decision C. no. 195/05, REJECTED as out of time the proposal for repetition of procedure finalized by Judgment of the Supreme Court of Kosovo in Prishtina, Rev.no.395/2008, of 02 June 2009, filed by the authorized representative of the claimants Zydi and Feti Islami, lawyer Shahin Bajgora, on 08 June 2010.
14. Against this decision, the authorized representative of the claimants duly filed an appeal due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation, and erroneous application of substantive law by a proposal that the challenged ruling to be quashed and the proposal for repetition of procedure to be allowed.
15. On 10 January 2012, the District Court in Peja, by Ruling Ac. no. 497/2011, REJECTED as ungrounded the complaint of the claimant, and UPHELD the decision of the District Court in Peja, C. no. 195/05, of 22.09.2011.
16. On 10 February 2012, the claimants filed a revision against the Ruling of the District Court in Peja, Ac. no. 497/2011, of 10 January 2012, due to substantial violation of contested procedure provisions and erroneous application of substantive law, thereby proposing that the Supreme Court quash the decisions of lower instance courts, and remand the case to the first instance court for trial.
17. On 03 June 2013, the Supreme Court of Kosovo, by decision Rev. no. 85/2012, REJECTED as ungrounded the revision of the claimants, filed against the

Ruling of the District Court in Peja, Ac. no. 497/2011, of 10 January 2012, with the following reasoning;

“The court of first instance, based on the determined factual situation found that the Judgment of the Municipal Court in Peja, C.No. 195/2005 of 26.05.2006 was served on the authorized representative of claimants Ferid Xhikolli, on 02.08.2006, whereas Shahin Bajgora, on 10.06.2008, Judgment of Supreme Court of Kosovo in Prishtina Rev.no. 295/2008 of 02.06.2009 was served on Ferid Xhikolli on 15.07.2009, whereas on Shahin Bajgora on 16.07.2009. The proposal for repetition of the procedure, the practicing lawyer Shahin Bajgora, filed on 8.6.2010. Being based that the claimants’ authorized representative, the practicing lawyer Shahin Bajgora has filed proposal after the time limit, provided by Article 234 para.1 item g), rejected the latter as out of time”.

“According to the assessment of the Supreme Court, the conclusion of the lower instance court is based on law and fair. Pursuant to Article 232, item g) of LCP, specifically, is provided that the procedure finalized by judgment or by final ruling of the court, can be repeated according to the proposal of the party, if the party becomes aware of new facts or finds new evidence, or gains the opportunity to use them, based on which would be rendered final more favorable, decision for the party, if the facts and other evidence that were used in the previous procedure. The proposal for repetition of procedure, pursuant to Article 234.1 is filed within 30 days and that if in the case from Article 232 item g) from the day the party could file new facts or evidence, therefore setting from the fact that the claimants filed their proposal for repetition of procedure after the time limit provided by Article 234.1, item g), therefore the court of first instance has rightly decided, when it rejected as out of time the proposal for repetition of the procedure, pursuant to Article 237.1 of the LCP”.

Applicant’s allegations

18. The Applicant alleges that the “Municipal Court in Peja, by its Ruling C.no.195/05 of 22.09.2011, District Court in Peja, by its Ruling Ac.no.197/2011 of 10.01.2012, and Supreme Court of Kosovo, by its Ruling Rev.no.85/2012 of 03.06.2013 have constituted violations of LCP legal provisions mentioned in the following of this Constitutional referral, by being partial, unfair and arbitrary, by which were violated and denied the rights of this referral to Applicants, which are guaranteed to them by the Constitution of the Republic of Kosovo (hereinafter: the Constitution, by the following Articles: 21, 22, 23, 24, 31, 32,41, 46, 48 and 54 of the Constitution of the Republic of Kosovo, as well as Article 6 of European Convention for Protection of Human Rights and Freedoms and item 1 of Protocol 1 of this Convention (hereinafter: ECHR)”
19. The Applicant addresses the Constitutional Court with the following request:

“To repeal rulings of the regular courts:

1. Ruling of Municipal Court in Peja C.no. 195/05 of 22.09.2011
2. Ruling of District Court in Peja Ac.no. 497/2011 of 10.01.2012

3. *Ruling of Supreme Court of Kosovo Rev.no. 85/2012 of 03.06.2013 AS UNLAWFUL*

4. *To be approved the proposal of Applicants of this constitutional referral as grounded”.*

20. The Applicant simultaneously alleges violations of a larger number of legal provisions of the Law on Contested Procedure, which according to the applicant's allegations occurred in procedures ruling on the right of use on the expropriated construction parcel in the city, which in substance are related to interpretation of the legal norms on the request for repetition of procedure, and by their improper interpretation by the regular courts and by rejection of the proposal for repetition of procedure as out of time, according to applicant's allegations, have violated „*the right to fair and impartial trial, guaranteed by Article 31 of the Constitution* “.

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first 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.

22. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo 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”.

23. Furthermore, the Court must also take into consideration the Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that

...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights”.

24. According to the Constitution, the Constitutional Court is not a court of appeal when examining decisions rendered by regular courts. It is the role of regular courts to interpret the law and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECtHR] 1999-I).

25. The Applicant has not filed any *prima facie* evidence supporting his allegation of violation of his constitutional rights (see, Vanek v. Republic of Slovakia, ECtHR Resolution on admissibility of application, no. 53363/99 of 31 May 2005). The Applicant does not state the manner in which Articles 21, 22, 23, 24, 31, 32, 41, 46, 48 and 54 of the Constitution, and Article 6 of the European

Convention on Protection of Human Rights and Fundamental Freedoms, and item 1 of the Protocol 1 to the Convention (hereinafter: ECHR) support his allegations, as provided by Article 113.7 of the Constitution, and Article 48 of the Law.

26. The Applicant alleges that his rights were violated by erroneous determination of facts and application of law by regular courts, without clarifying the manner in which such decisions violated his constitutional rights.
27. The Court further notes that the mere fact that the applicant is discontented with the outcomes of the case cannot raise an arguable claim of violation of Article 31 of the Constitution (see *mutatis mutandis*, Judgment of the ECtHR, Application no. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
28. In this case, the Applicant was provided numerous possibilities to make his case, and challenge the interpretation of the law which he considers to be improper, before the Municipal Court in Peja, the District Court in Peja, and the Supreme Court. Upon review of entire proceedings, the Constitutional Court has not found that relevant procedures were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, Resolution of the ECtHR on admissibility of Application, no. 17064/06 of 30 June 2009).
29. Finally, admissibility criteria were not met in this Referral. The Applicant has not presented and supported, by evidence, the allegation that the challenged decisions violated his constitutional rights and freedoms.
30. Based on the above, the Referral is manifestly ill-founded, and must be rejected as inadmissible, in compliance with Rule 36 (2) b) of the Rules of Procedure.

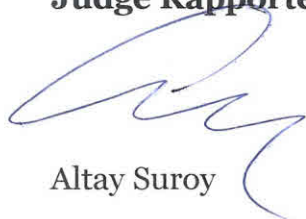
FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of the Procedure, in its session held on 13 March 2014, unanimously

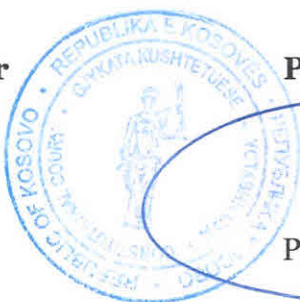
DECIDES

- I. TO DECLARE 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



Altay Suroy



President of the Constitutional Court



Prof. Dr. Enver Hasani