



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

Prishtina, on 28 April 2014
Ref. No.: RK573/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI206/13

Applicants

Tanasko Đorđević,
Miloratka Jelić,
Srboljub Đorđević,
Serafina Đorđević,
Jagoda Janković and
Milorad Đorđević

**Constitutional Review of the Judgment Rev. Mlc. No. 377/2009 of the
Supreme Court of Kosovo, of 8 May 2012**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Tanasko Đorđević, Miloratka Jelić, Srboljub Đorđević, Serafina Đorđević, Jagoda Janković and Milorad Đorđević, all from

Prizren (hereinafter, the Applicants), represented by Lawyer Bashkim Nevzati from Prizren.

Challenged decision

2. The Applicants challenge the Judgment Rev. Mlc. No. 377/2009 of the Supreme Court of Kosovo, of 8 May 2012, which was served upon them on 12 July 2012.

Subject matter

3. The Applicants claim that the challenged judgment of the Supreme Court violates their right to protection of property as guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The legal basis for filing the Referral is Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 24 August 2012, the Applicants filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was registered under number KI79/12.
6. On 15 November 2013, the Review Panel considered the Report of the Judge Rapporteur and, pursuant to Rule 31 (1) of the Rules of Procedure, made a recommendation to the Court on the Inadmissibility of the Referral KI79/12.
7. On the same date of 15 November 2013, the Applicants filed additional documents to the Referral KI79/12 already subject to deliberation of the Court.
8. Thus, on 15 November 2013, the filed additional documents were registered as a new Referral under number KI206/13.
9. On 03 December 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur, and a Review Panel, composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
10. On 24 January 2014, the Court notified the Applicants and the Supreme Court of the registration of the new Referral.
11. On 13 March 2014, after having considered the Report of the Judge Rapporteur, the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 15 November 2013, the Applicants filed additional documents to their Referral KI79/12, stating that they *“managed to provide some other evidence, (...) which have to do with the revision, as extraordinary remedy.”* The Applicants state that *“the present case could not be reviewed by extraordinary legal remedy and neither such requirements were met, but the review was done by general method-refuse the return of property without taking into consideration violations of the constitutional and legal rights.”* Finally, the Applicants conclude that, *“the evidence attached clearly shows that in cases it was acted in accordance with the provisions, the similar cases were rejected”*.
13. In fact, as some other new evidence, the Applicants have submitted three (3) Judgments of the Supreme Court [Rev 19/2006, Rev 189/2010, Rev 243/2011], which are not directly related to the individual cases KI79/12 and KI206/13, and where none of the Applicants is a party to such Supreme Court proceedings.

Applicant’s allegations

14. The Applicants allege in the additional documents of 15 November 2013 that *“the review was done by general method-refuse the return of property without taking into consideration violations of the constitutional and legal rights”*.
15. In this Referral KI206/13, the Applicants did not mention any other violation of constitutionally guaranteed rights. Hence, the Court considers that the Applicants continue to uphold their allegations as clarified in case KI79/12, namely that the challenged judgment of the Supreme Court violates their rights to protection of property, as guaranteed by Article 46 of the Constitution.

Admissibility of the Referral

16. The Court examines the admissibility requirements considering that this Referral KI206/13 is a continuation of the Referral KI79/12 and thus it will take into account the specifics of the Referral KI206/13.
17. In this regard, the Court refers to Rule 31 (1) of the Rules of Procedure, which foresees that:

“At any time before the Judge Rapporteur has submitted the report, a party that has filed a referral or a reply, or the Court acting ex officio, may submit to the Secretariat a correction of clerical or numerical errors contained in the materials filed.”
18. In the present case, the Applicants have filed with the Court additional documents to the Referral KI79/12. However, the Applicants have done so after the preliminary report having been submitted to the Review Panel by the Judge Rapporteur. Therefore, in accordance with Rule 31 (1) of the Rules of Procedure, the Court registered the Applicants’ referral of 15 November as a new Referral KI206/13.

19. Nevertheless, the Court notes that the filed additional documents are not directly related to the individual cases of the Applicants, nor are the Applicants a party to any of these newly filed Supreme Court Judgments.
20. Moreover, the Court considers that such additional documents neither constitute a new allegation nor provide sufficient and relevant grounds for a new Decision.
21. Therefore, the Court concludes that the filed additional documents have no impact on the Court's previous decision in the case KI79/12.
22. In this regard, the Court refers to Rule 36 (3) e) of the Rules of Procedure, which foresees that:

„A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision.“

23. In fact, the Court recalls that it has dealt with the mentioned case KI79/12, where a Resolution on Inadmissibility of the referral was published on 6 December 2013. The Court reasoned that the Applicants have not presented any *prima facie* evidence to support their allegations of a violation of their constitutionally guaranteed rights. Therefore, the Referral KI79/12 was found inadmissible, pursuant to Rule 36 (2) a) and b) of the Rules of Procedure.
24. Consequently, the Court finds that, pursuant to Rule 36 (3) e) of the Rules of Procedure, the Referral KI206/13 is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 20 of the Law and Rule 36 (3) (e) 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. This Decision is effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani