



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

Prishtina, 4 April 2014
Ref. no.: RK592/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI214/13

Applicant

Kadrush Beqa

**Constitutional review of Decision, Rev. no. 75/2013, of the Supreme
Court of Kosovo, dated 16 September 2013**

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 Mr. Kadrush Beqa (hereinafter, the Applicant) residing in Gjakova.

Challenged decisions

2. The Applicant challenges Decision Rev. no. 75/2013, of the Supreme Court of Kosovo, dated 16 September 2013 in connection with Judgment Ac. no. 566/2012, of the District Court of Peja, dated 3 December 2013; and Decision Ndr. no. 45/2008, of the Municipal Court in Gjakova, dated 23 December 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions of the regular courts which upheld the allegedly “wrongful and unfair expropriation of the Applicant’s property”.
4. In this respect, the Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, 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 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 20 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 3 December 2013, the President of the Constitutional Court, by Decision No. GJR. KI214/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI214/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
8. On 19 December 2013, the Court notified the Applicant about the registration of the Referral and required of him to submit additional documents. On the same date, the Supreme Court of Kosovo was notified of the Referral.
9. On 26 December 2013, the Applicant filed additional documents with the Court.
10. On 23 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

11. On 29 December 1960, the Peoples Council of Gjakova Municipality, respectively the Commission for determining the immovable property to be

expropriated, by Decision no. 03-3475/60, expropriated an immovable property owned by D.B., who was the Applicant's legal predecessor.

12. On 16 May 2008, the Applicant filed a motion with the Municipal Court in Gjakova, requesting compensation for his predecessor's expropriated property.
13. On 23 December 2011, the Municipal Court in Gjakova, by Decision Ndr. no. 45/2008, rejected as unfounded the motion of the Applicant to oblige the respondent party (Municipality of Gjakova), that in the name of expropriated property respectively the cadastral plot no. 2120 ZK Gjakova-City, to pay to him the total amount of 200.000,00 euro, including legal interest to commence from the day when the respondent party took possession of the stated property in 1960, or, alternatively, to compensate the Applicant with an urban construction plot of the same size as the expropriated plot.
14. On 3 December 2012, the District Court in Peja, by Decision Ac. no. 566/2012, rejected the appeal of the Applicant as unfounded and upheld the Decision of the Municipal Court in Gjakova.
15. On 16 September 2013, the Supreme Court of Kosovo, by Decision Rev. no. 75/2013, rejected as unfounded the request for revision filed by the Applicant against the Decision of the District Court in Peja.
16. In the above-mentioned decision, the Supreme Court of Kosovo reasoned:

"... from the case file it is found that the proposers (Applicant) seek to oblige the counter proposer to compensate to them the dispossessed area of 0.05.38 ha, of cadastral plot no.2120 CZ Gjakova-City with the amount of 200.000 €. Or their alternative plea that they are given another piece of construction land with the same area. The Peoples Council of Gjakova Municipality – the Commission for determining the immovable property to be expropriated, with Ruling no.03-3475/60 of date 29.12.1960, expropriated the immovable property of the proposers' legal predecessor D.B – house with an area of 228 m2, that was constructed in cadastral plot no. 2120 CZ Gjakova-City, 1 stable adapted for dwelling, 5 plum trees, 2 quince trees, 1 entrance door grape vine (yard doors) granary, and orchard and on behalf of the compensation for the expropriated property he was allocated the total counter value of 1.775.320 dinars.

[...]

The first instance court on the grounds of this situation of the case found that the proposers' plea for determining the compensation of the restituted land became statute limited and as such is not grounded. Therefore pursuant to Article 360 and in conjunction to Article 371 of the LOR decided as in the enacting clause of the Ruling.

The second instance court did correctly apply the material right when it found that the proposers' proposal for compensating the dispossessed property became statute limited because the proposers' legal predecessor was dispossessed of the contested immovable property in 1960, whereas the

proposers submitted the proposal on 16 May 2008, after 45 years and pursuant to the correct assessment of the first instance court the statutory limitation limits the proposers' right to seek the fulfillment of the obligation even in case the proposers are right".

Applicant's allegations

17. The Applicant alleges that the decision of the Supreme Court of Kosovo is characterized by violations of substantive and procedural law.
18. The Applicant also alleges a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution.

Assessment of the admissibility

19. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary first to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

"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".

21. Furthermore, the Court refers to Article 49 of the Law, which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force".

22. In the concrete case, the Court considers that the Applicant is an authorized person, that he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution, and that the referral is filed within the four months legal deadline in compliance with Article 49 of the Law.
23. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provides:

*"(1) The Court may only deal with Referrals if
...
(c) the Referral is not manifestly ill-founded".*

24. As to the Applicant's claim that the Supreme Court of Kosovo has allegedly violated substantive and procedural law, the Court considers questions of fact and of law to be within the ambit of the regular courts, in this case the Supreme

Court of Kosovo. The Court cannot substitute its own findings with those of the regular courts because it is neither a court of appeal nor a court of fourth instance.

25. In the case at issue, the Court notes that procedural guarantees of the right to a fair trial as prescribed by the Constitution and the Convention were met; there is no trace of arbitrariness on the part of the Supreme Court. Furthermore, the Court considers that the decision of the Supreme Court is legally grounded, well reasoned and coherent because it explains to the Applicant that his alleged rights to the expropriated property are time-barred by statutory limitation.
26. The Constitutional Court recalls that it is not a fact-finding Court. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).
27. Moreover, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
28. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
29. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.
30. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible 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 47 of the Law and Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 23 January 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani