



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

Prishtina, 19 May 2014
Ref. no.: RK624/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI222/13

Applicants

Rrustem Veseli and Xhafer Zeqë Smajli

**Constitutional Review of the Judgment, Rev. no. 118/2012, of the
Supreme Court, dated 10 June 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

Applicants

1. The referral was filed by Mr. Rrustem Veseli and Mr. Xhafer Zeqë Smajli from Gjakova (hereinafter: the “Applicants”), represented by Mr. Prenk Pepaj a practicing lawyer from Gjakova.

Challenged decision

2. The Applicants challenge the judgment of the Supreme Court, Rev. no. 118/2012, dated 10 June 2013, which according to the Applicant was served to him on 29 August 2013.

Subject matter

3. The Applicants request constitutional review of the judgment of the Supreme Court, Rev. no. 118/2012, of 10 June 2013. The Applicants consider that the regular courts have violated their property rights.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: "the Constitution"), Article 47 of the Law on the Constitutional Court, No. 03/L-121 (hereinafter: "the Law") and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 10 December 2013, the Applicants submitted the Referral to the Constitutional Court.
6. On 13 January 2013, the President, by Decision No. KI222/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI222/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Artta Rama-Hajrizi.
7. On 27 January 2014, the Court requested from the Applicants to submit the power of attorney.
8. On 27 January 2014, the Court notified the Supreme Court of the referral.
9. On 10 February 2014, the Applicants submitted the power of attorney to the Court.
10. On 25 March 2014, after having reviewed the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

11. D. H. is the former spouse of the Applicant Rustem Veseli. The Applicant Rustem Veseli sold the property to the second Applicant Xhafer Smajli. D.H. filed a claim with the regular court requesting the annulment of the sales contract.
12. On 24 December 2010, the Municipal Court of Gjakova rendered Judgment C. no. 557/06, whereby it confirmed that the property sales contract between the

Applicants for half of the property is null and thus does not have legal effect for D. H. Furthermore, it is confirmed that D.H. is the owner of the half of the property. The Municipal Court of Gjakova held that *“Pursuant to the legal provision of Article 307, paragraph 1 of the Law on marriage and family relations the property that is acquired through work during the marital union and the income from that wealth are joint wealth thus cumulatively two presumptions or conditions must be met: 1) joint work and 2) existence of the marital union. Both the claimant and the first respondent fulfill these conditions. The claimant’s work can also be considered as indirect work (such as working to take care of the children and cooking food for the family), because for this performed work no payment is received, but the contribution consists in the fact that it enables the other spouse to acquire rights through direct work. Thus the work of the spouse but also same assistance that one spouse provides for the other in taking care for the children, managing the household, caring and maintaining the wealth and any other work and cooperation in administering and taking care of the joint wealth pursuant to Article 314 of the above mentioned law) are contributions that in this particular case are dedicated to the claimant (and which gave to the first respondent the time and opportunity to also work in supervising a building in Austria, which meant more income for him) thus it is derived the conclusion that “the wealth acquired in marriage through the work of spouses is joint wealth”. Thus, the Court in this particular case completely approved the claimant’s specified statement of claim.”*

13. On 5 March 2012, the District Court in Peja, by Judgement Ac. no. 390/2011, rejected the appeal of the Applicants as ungrounded and confirmed the Judgment of the Municipal Court in Gjakova.
14. On 10 June 2013, the Supreme Court, by decision Rev. no. 118/2012, rejected as ungrounded the Applicants request for revision. The Supreme Court held that the lower instance courts have correctly assessed the factual situation and correctly applied the material law.

Applicants’ allegations

15. The Applicants alleges that *“[...] the JUDGMENTS of both first and second instance and the Judgment of the Supreme Court of Kosovo in Prishtina have been rendered in violation to the provisions of Article 103, paragraph 2 of the Law on Obligatory Relations (applicable at the time in Kosovo).”*

Assessment of the Admissibility of the Referral

16. In order to be able to adjudicate the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules.
17. Article 113.7 of the Constitution determine the general framework in order for the Referral to be deemed admissible:

“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.”

18. Furthermore, Rule 36 (1) c) of the Rules provides that:

“The Court may only deal with Referrals if: the Referral is not manifestly illfounded.”

19. Based on the submitted documents, the Court notes that the allegations made by the Applicants before the Court are grounded on a violation of the Law on Obligation and not on the Constitution.
20. In this respect, the Court concludes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
21. Thus, the Applicants have not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See Vanek v. Slovak Republic, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify which provisions of the Constitution have been violated, as required by Article 48 of the Law.
22. It follows that there is no constitutional violation and thus the Referral is manifestly ill-founded and in compliance with Rule 36 (1) c) of the Rules Referral must be declared as inadmissible.

FOR THESE REASONS

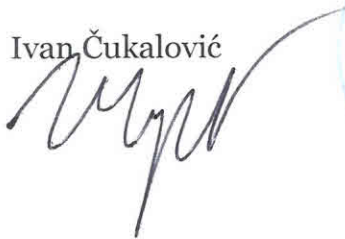
The Constitutional Court, pursuant to Article 113.7 of the Constitution and in compliance with Rule 36 (1) c) of Rules of Procedure, on 25 March 2014, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

