



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

Prishtina, 4 July 2013
No.ref.:RK435/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI29/13

Applicant

Feriha Hoti

**Constitutional review of the Supreme Court Judgment Mlc.no.12/2009
dated 14 May 2012**

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

Applicant

1. The Applicant is Feriha Hoti represented by Merita Limani from Prishtina.

Challenged decisions

2. The Applicant challenges Supreme Court Judgment Mlc.no.12/2009 dated 14 May 2012. The date when the decision was served to the Applicant is unknown.

Legal basis

3. Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009 (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").

Subject matter

4. The subject matter of the Referral is the Applicant's complaint that the Supreme Court of Kosovo based on the request for protection of legality propounded by the Public Prosecutor made a decision to overrule decisions of lower instance courts which were favorable to the Applicant.

Procedure before the Court

5. On 6 March 2013, the Applicant submitted a referral with the Court.
6. On 22 March 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and a Review panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 3 April 2013, the Court notified the Applicant and the Supreme Court of Kosovo about the registration of the Referral.
8. On 10 April 2013, the Court asked the Applicant to submit evidence of service of the judgment of the Supreme Court.
9. On 17 April 2013, the Applicant replied to the Court.
10. On 19 April 2013, the Court notified the Municipal Court in Prishtina about the registration of the Referral, and at the same time required from it to submit evidence of service of the Judgment of the Supreme Court on the Applicant.
11. On 19 June 2013, the Review Panel deliberated the report of Judge Rapporteur and recommended to the full court the inadmissibility of the Referral.

Background of the Referral

12. On 21 January 2010, the Applicant entered a gift contract with M.SH, whereby M.SH was the grantor and the Applicant the grantee. Real estate evidenced as

cadastral plot P-71813068 – 01396-7 with a surface of 183 m² possession list no. UL – 71813068 – 13487 ZK Prizren was accorded to the Applicant. The gift contract was legalized in the Municipal Court of Prizren.

13. The grantor MSH was, however, involved in a property dispute with third parties pertinent to the real estate which he had accorded to the Applicant. The property dispute was settled in judicial proceedings by the Supreme Court of Kosovo, following the request for protection of legality propounded by the Public Prosecutor.
14. The Applicant as the grantee of the disputed property decided to file a Referral with the Court.

Summary of the facts as evidenced by the documents furnished by the Applicant

15. On 13 May 2008, the Municipal Court in Prizren by Judgment C.no.772/07 ruled that MSH is entitled to use the construction land under dispute and at the same time rejected the claims of counter-claimants and obliged them to admit the terms stipulated in the said judgment.
16. On 13 February 2009, the District Court in Prizren by Judgment Ac.no.438/2008, upheld the Judgment C.no.772/07 of the Municipal Court in Prizren.
17. On 14 May 2012, the Supreme Court of Kosovo by Judgment Mlc.no.12/2009, approved the request for protection of legality filed by the Public Prosecutor therewith overruling the impugned judgments of the municipal and the district courts of Prizren respectively; and concurrently rejected the claim of MSH and approved the claims of counterclaimants over the disputed construction land.

Applicant's allegations

18. The Applicant alleges that the decision of Supreme Court was marked by conflict of interest and influenced by A.S., *"who is part of the judiciary and has caused legal inequality which has influenced the Panel of Supreme Court in its decision"*.
19. The Applicant alleges violation of Articles 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution.

Assessment of admissibility

20. 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, the Law and the Rules of Procedure.
21. Regarding the Applicant's Referral, 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. From the submissions it can be seen that the Referral was submitted on 6 March 2013, and that the judgment of the Supreme Court was rendered on 14 May 2012. The Referral was submitted beyond the four (4) months deadline prescribed by Article 49 of the Law.

23. The Court asked the Applicant to submit evidence of service of the Supreme Court judgment, to which she replied:

“...I inform you that the decision of the Supreme Court of the Republic of Kosovo was served to my brother M.SH., who after a long time served the said decision on me”.

24. Based on the aforementioned reply, the Applicant could not prove before this Court that the Referral was filed within prescribed deadline as stipulated by Article 49 of the Law.

25. It follows that the Referral is out of time.

26. Therefore, the Referral should be rejected as inadmissible due to non-compliance with the prescribed deadline as stipulated by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

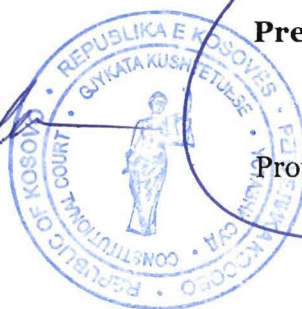
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 4 July 2013, unanimously:

DECIDES


- I. TO REJECT the Referral as 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


Robert Carolan



President of the Constitutional Court


Prof. dr. Enver Hasani