



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

Prishtina, on 30 June 2014
Ref.no.:RK659/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI41/14

Applicant

Bajram Osmani

**Request for constitutional review of the Judgment of the Court of Appeal
of the Republic of Kosovo, AC. no. 4984/2012 of 29 November 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

Applicant

1. The Applicant is Mr. Bajram Osmani, residing in Dragash (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Court of Appeal of the Republic of Kosovo, AC. no. 4984/2012 of 29 November 2013 (hereinafter: the challenged decision), which was served on the Applicant on 14 January 2014.

Subject matter

3. The subject matter of this Referral is the constitutional review of the Judgment of the Court of Appeal, AC. no. 4984/2012 of 29 November 2013, regarding the Applicant's allegation for violation of the rights guaranteed by Article 31 of the Constitution and by Article 6 of ECHR.

Legal basis

4. The legal basis is: Article 113.7 of the Constitution, Article 20 and 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 Constitutional Court

5. On 5 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 1 April 2014, the President of the Court, by Decision no. GJR. KI41/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President of the Court by Decision nr. KSH. KI41/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 11 April 2014, the Court notified the Applicant, the Court of Appeal in Prishtina and the interested party B. B., of the registration of Referral.
8. On 19 May 2014, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 16 October 2012, the Municipal Court in Dragash, by Decision P. no. 72/2012, rejected in entirety the statement of claim of B. B., by which alleged that the Applicant obstructed him in possession of the joint yard (cadastral plot no. 836, c.z. Leshtan, in the place called Selo - Lestane - Selo) due to the fact that the Applicant on 29 August 2012 put a concrete pillar and then constructed a terrace in a length of 5.50 m and in a width of 1.00 m, with a purpose of constructing other structures on it.
10. On 29 November 2011, the Court of Appeal, by Judgment Ac. no. 4984/2012, modified the Decision of the Municipal Court P. no. 72/2012 and concluded

that the Applicant has obstructed B. B in possession. The Applicant was ordered to return within the time limit of seven (7) days the right of use and possession of the joint yard to the previous situation, from the day the abovementioned decision was served on him, under the threat of forced execution.

11. Furthermore, the Court of Appeal reasoned its decision as follows:

[...]

“The Court of Appeal did not approve as correct and lawful the first instance’s legal stance, because the challenged Ruling does not contain substantial violations of the contested procedure pursuant to Article 182, paragraph 2, items b), g), j), k), and m) that the second instance court reviews ex officio pursuant to Article 184 of the LCP.

Based on this correct and complete determined factual situation that is challenged by the appeal’s allegations, the first instance court applied erroneously the material law, which is also reviewed ex officio by the second instance court pursuant to Article 194 of the LCP.

The second instance court took this legal stance, because the obstruction to possession is done in two ways: disturbance and dispossession of property. In relation to disturbance the respondent obstructed the claimant in the possession of things or rights, but the thing is not dispossessed, respectively there is no deprivation of possession. Dispossession occurs upon deprivation of possession. Thus it results to provide protection for the claiming party due to obstruction to possession.

From the case file and uncontested facts it has been determined that the litigating parties had a joint yard, thus they were co-owners and on this ground the claimant was entitled to judicial protection pursuant to Article 108 of the Law on Property and Other Real Rights. The decision on the expenses of the procedure is based on the provisions of Articles 453 and 454 of the LCP.

From the above, the challenged decision had to be modified and the claimant’s statement of claim rejected as ungrounded, pursuant to Article 195 item e) in conjunction with Article 209, paragraph 1, item c) of the LCP”.

12. On 31 January 2014, the Applicant filed a request for protection of legality with the Office of the State Prosecutor of the Republic of Kosovo against the Judgment of the Court of Appeal, in order to have the dispute resolved by the Supreme Court of the Republic of Kosovo.
13. On 11 February 2014, the Office of the State Prosecutor, by notification KML. C. no. 14/14, notified the Applicant that the requirements for filing the request for protection of legality were not met.

Applicant’s allegations

14. The Applicant alleges that the challenged decision AC. no. 4984/2012 of 29 November 2013, violates his rights guaranteed by Article 31 of the Constitution, and Article 6 of ECHR, due to the fact that: *The Court of Appeal was obliged to*

provide in the reasoning of the Ruling additional reasons as to why the first instance Ruling was modified and to address the essential matter – obstruction to possession, and not review the property relationships, when it specified that the litigating parties had a joint yard and were co-owners, therefore based on this fact pursuant to Article 108 of the Law on Property and other Real Rights provided judicial protection, thus violating the guaranteed right to fair and impartial trial pursuant to Article 31 of the Constitution of the Republic of Kosovo.”

15. The Applicant also complains against the notification KML C. no. 14/14 of the State Prosecutor, which rejected his request for protection of legality, without any specific reasons and alleges that the State Prosecutor denied him the use of this legal remedy, that is, to have his case reviewed by the Supreme Court of the Republic of Kosovo.

Admissibility of the Referral

16. In order to be able to review the Applicant’s Referral, the Court must first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this case, the Court refers to the Rule 36 (1) c) of the Rules of Procedure, which provides:

*36. (1) “The Court may only deal with Referrals if:
[...]
c) the Referral is not manifestly ill-founded.*

36. (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, or
[...]
(d) when the Applicant does not sufficiently substantiate his claim”;*

18. The Court notes that the Applicant alleges violation of Article 31 of the Constitution and Article 6 of ECHR.

19. In this regard, Article 31 [Right to a Fair and Impartial Trial] of the Constitution establishes that:

“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”.

20. In addition, Article 6 of ECHR provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within

a reasonable time by an independent and impartial tribunal established by law.”

21. The Court notes that the challenged decision contains extensive and comprehensive reasoning. In this context, the challenged decision does not contain violations of the rights guaranteed by the Constitution, as alleged by the Applicant. The Court of Appeal, which decision is challenged, has provided sufficient reasons regarding the facts of the case and the findings, which are *ex-officio* examined by that court.
22. It is not sufficient that the Applicant in his Referral only mentions articles or provisions of the Constitution, alleging violation of his rights. The allegation of a violation of articles or provisions of the Constitution should be substantiated and reasoned in order for the referral to be grounded.
23. The task of the Court regarding alleged violations of the constitutional rights is to analyze and assess whether the proceedings in their entirety were fair and in accordance with the protection, explicitly provided by the Constitution. Thus, the Constitutional Court is not a court of fourth instance, when considering the decisions issued by the courts of lower instance. It is the duty of the regular courts to interpret and apply the pertinent rules of both the procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain [GC]*, no. 30544/96, paragraph 28, the European Court of Human Rights [ECHR] 1999-I).
24. The Court notes that in the proceedings before the Court of Appeal the Applicant was afforded ample opportunities to present arguments, facts and evidence, against the allegations of the opposing party, therefore the allegation that the Applicant was denied the right to a fair and impartial trial is not grounded.
25. In the present case, the Applicant has not presented any convincing argument indicating violation of the fundamental rights guaranteed by the Constitution (See, *Vanek v. Slovak Republic*, ECHR Decision on admissibility of application no. 53363/99 of 31 May 2005).
26. Moreover, in this case, the Court cannot consider that the pertinent proceedings conducted before the Court of Appeal, were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub vs. Lithuania*, ECHR Decision on admissibility of application No. 17064/06 of 30 June 2009).
27. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has failed to prove that the challenged decision violates his constitutionally guaranteed rights.
28. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in accordance with Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 19 May 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Dr. Kadri Kryeziu




Prof. Dr. Enver Hasani