



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

Pristina, 16 December 2013
Ref. no.: RK525/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI42/13

Applicant

Shahire Beqiraj

**Constitutional review of the Judgment of the Supreme Court of Kosovo,
Rev. no. 170/2010, of 7 February 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 Mrs. Shahire Beqiraj from village Vrellë, Municipality of Istog.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 170/2010, of 7 February 2013. The Applicant did not specify when she received it.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court Rev. no. 170/2010, of 7 February 2013, which, according to Applicant's allegations, has violated Article 22 (Direct Applicability of International Agreements and Instruments) and Article 31 of the Constitution (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) due to a disagreement over the right to property between the Applicant and A. B. with regard to the determination of the right to the property registered as cadastral plots no. 510/2, 870/1 and 892/2 under possession list no. 213 CZ in village Vrellë.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure.

Proceedings before the Court

5. On 20 March 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 25 March 2013, the President, by Decision no. 42/13, appointed Judge Arta Rama-Hajrizi as the Judge Rapporteur. On the same date, the President, by Decision no. KSH. 42/13, appointed the Review Panel composed of the Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 4 April 2013, the Court informed the Applicant and the Supreme Court of the registration of Referral.
8. On 19 June 2013, the Applicant submitted to the Court an additional document- "Minutes from questioning the injured party".
9. On 21 October 2013, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 26 February 1982, the Municipal Court in Istog, deciding upon the proposal of R. B. for the physical division of his property, issued Decision no. 28/82 and decided on the separation of the joint household between R. B., C. B. and Sh. B.

11. On 28 June 1988, the Municipal Court in Istog issued Decision N.no.125/88, approving the proposal for physical division of the property of R. B., thereby $\frac{1}{4}$ part of the house and the entire plot that is registered under possession list no. 213 CZ Vrellë, and $\frac{1}{2}$ of the $\frac{1}{10}$ part of the land of all the plots that are registered under possession list no. 269 CM- Vrellë belonged to the Applicant.
12. On 12 September 2008, the Municipal Court in Istog, deciding in the legal-civil dispute of the plaintiff A. B. for confirmation of ownership, issued Judgment on the basis of inheritance C. No. 41/02, determining that:

“A. B., on the basis of the physical separation of the joint household and the property, is the owner of the immovable property which consists of cadastral plots no. 510/2..., no. 870/1... and no. 892/4... based on possession list no. 213 CZ Vrellë”.

Further, in its reasoning, the Municipal Court in Istog stated that *“this court deemed that the plaintiff’s claim is well-founded and it has been approved as such, as in the enacting clause of this judgment.*

13. On 22 April 2010, the District Court in Peja, acting upon the appeal filed by the Applicant and her sister R. Q. against Judgment C. No. 41/02 of 12 September 2008, issued Judgment Ac. No. 490/08 rejecting the Applicant’s appeal as unfounded. In its reasoning, the District Court in Peja stated:

“... the legal stance of the first instance court is approved by the second instance court as being correct and based on Law, for the reason that the challenged judgment does not contain essential violations of the provisions of contested procedure under Article 354 paragraph 2 of LCP which the second instance court examines ex officio pursuant to Article 365 paragraph 2 of LCP”.

14. On 14 June 2010, the Applicant and R. Q., through their authorized representative approached the Prosecutor of the Republic of Kosovo requesting that he/she file “a Request for Protection of the Legality” after he/she finds *“... essential violations of the provisions of the contested procedure by the second instance court under Article 194 of LCP, because it has tolerated first instance court’s essential violations of the procedural provisions under Article 182 paragraph 2 item 1 of LCP...”.*

15. In the case file there is no document showing whether or not the Prosecutor of the Republic of Kosovo has decided on the request for protection of the legality.

16. On 7 February 2013, the Supreme Court of Kosovo, deciding on the revision of the Applicant and her sister, by Judgment Rev. No. 170/2010 rejected the revision as unfounded. In its reasoning, the Supreme Court stated:

“... the lower instance courts, by correctly and completely determining the factual situation, correctly and completely applied the factual situation, correctly applied the provisions of the contested procedure and the substantive law, when they found that the claim is well-founded. The judgment of the first instance court and the challenged judgment contain

sufficient reasons for the relevant facts, valid for a fair adjudication of this legal matter and they are acceptable for this court too...”

Applicant’s allegations

17. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. no. 170/2010 of 7 February 2013, alleging a violation of Article 22 (Direct Applicability of the International Agreements and Instruments) and Article 31 of the Constitution (Right to Fair and Impartial Trial)” of the Constitution and she requests from the Constitutional Court the following:

“I wish that it is enabled to me to prove that the procedure before the regular courts was not conducted based on the law and the Constitution and this had an epilogue which was detrimental to me and brought unjust property benefits to my opponent”.

“Respectively, to be concluded that the court procedure in relation to me was not conducted in a way that it would ensure equality of parties to proceedings”.

Assessment of the admissibility of the Referral

18. Firstly, in order to adjudicate the Applicant’s Referral, the Court needs to examine whether the Applicant has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
19. In this respect, Article 113, paragraph 7 of the Constitution provides:

7. 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.”

With regard to this requirement, the Court notes that the Applicant is a natural person and she is an authorized party in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

20. The Court should also determine whether the Applicant has exhausted all legal remedies in accordance with requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law. In the present case, the Applicant has presented facts showing that she has exhausted all legal remedies available under the applicable law.
21. The Applicant should also prove that she has complied with the requirements of Article 49 of the Law regarding the submission of the Referral within the set deadline. From the case file it can be seen that the Referral has been submitted within the four (4) month deadline, as prescribed by the Law and the Rules of Procedure.
22. With regard to the Referral, the Court also takes into account Rule 36.2 of the Rules of Procedure which provides that:

“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

d) when the Applicant does not sufficiently substantiate his claim.”

23. In this regard, the Court reiterates that under the Constitution it is not its task to act a fourth instance court with respect to decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR], 1999-I; see also Resolution on Inadmissibility in case KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No. 983/08, of 7 February 2011).
24. The Constitutional Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* European Commission on Human Rights, Case Edwards v. United Kingdom, Application No. 13071/87, of 10 July 1991).
25. From the case file, the Court notes that the reasoning given in the Decision issued by the District Court in Peja is clear and after having reviewed all the proceedings, the Court has also found that the proceedings before the Supreme Court have not been unfair or arbitrary (See, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR Decision as to the admissibility of the application, of 30 June 2009). Furthermore, the Judgment of the Supreme Court Rev. no. 170/2010 of 7 February 2013 is clear and well reasoned.
26. In addition, the Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutionally guaranteed rights (See, Vanek v. Slovak Republic, ECtHR Decision as to the admissibility of the application No. 53363/99 of 31 May 2005). The Applicant does not present arguments as to how Articles 22 and 31 of the Constitution have been violated.
27. For all the foregoing reasons, the Court is satisfied that the facts presented by the Applicant did not justify in any way the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated her claims, therefore the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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. This Decision is effective immediately.

Judge Rapporteur

Arta Rama-Hajrizi



President of the Constitutional Court

Prof. Dr. Enver Hasani