



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

Pristina, 26 September 2012
Ref. No.: RK306/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI59/12

Applicant

Remzi Berisha

**Constitutional review of the Judgment of the Supreme Court Rev. no. 254/2009
of 16 January 2012**

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 is submitted by Remzi Berisha (the Applicant) residing in Kacanik, represented by Muhamed Beqiri, lawyer from Ferizaj.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), Rev. no. 254/2009 of 16 January 2012, which was served on the Applicant on 7 February 2012, and which rejected his request for repeating of procedure before the court of the first instance.

Subject matter

3. The subject matter of the Referral is related to alleged violations of property rights guaranteed by the Constitution and European Convention on Human Rights.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: Law) and rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Procedure before the Court

5. The applicant submitted the Referral to the Constitutional Court (hereinafter: the Court) on 6 June 2012.
6. On 17 July 2012, the Court informed the Applicant, the Supreme Court and the Municipal Assembly of Kacanik on registration of the Referral.
7. On 5 July 2012, the President, by Decision no. GJR 59/12, appointed Judge Robert Carolan as Judge Rapporteur. On the same day, by Decision no. KSH 59/12 appointed the Review Panel composed of judges: Altay Suroy (presiding), Almiro Rodriguez (member) and Arta Rama-Hajrizi (member).
8. On 20 September 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 3 November 1987, the Municipal Court in Kacanik (Resolution no.121/1987) took over the immovable property Pk.no.1121 from Mr. Hisni Berisha, (undeveloped construction land, in area of 2351 m², evidenced in possession list no.92, Kacanik), and gave in possession to the Municipality of Kacanik, respectively to the Fighters Association of NLW of the Municipality of Kacanik. The said real estate, was assigned a value of compensation based on the selling price in the market, according to the categorization of the immovable property. But Mr. Berisha did not agree for the compensation to be done in cash.
10. On 3 July 2008, the Municipal Court in Kacanik (Judgment C. no. 41/2002) approved the request of the Applicant and three other co-owners that all of them have earned the right to use the 1/4 part of the immovable property pk.no.1121/1 (the place called "Oborri" with culture, arable land of II category), in area of 0,25 08 acres and the rest with infertile culture of 0.03, 09 acres, along in the total area of 0,28, 17 acres, recorded in the possession list no. 1177, Cadastral Zone in Kacanik. By this Judgment, the Directorate of Cadastre, Geodesy and Property in Kacanik were obliged that once the judgment became final to make changes in the cadastre book. That court relied in

its reasoning on the fact that the Municipality had expropriated the property which was registered in the name of Hisni Berisha, while the property belonged to Rexhep Berisha. The Municipality of Kacanik had made the expropriation in 1987, while the cadastral changes were made in 2002 before the procedure for the expropriation of the immovable property was completed. That court asserted that it had found no evidence that would prove that the payment related to this property was executed by the competent authorities.

11. Against the Judgment of the Municipal Court in Kacanik (Judgment C.no.41/2002 of 3 July 2008), the Municipality of Kacanik exercised an appeal in the District Court in Prishtina.
12. On 18 December 2008, the District Court in Prishtina, (Resolution Ac. no. 1030/2008) rejected as ungrounded the appeal exercised by the Municipality of Kacanik and confirmed the judgment of first instance C. no. 41/2002.
13. The Municipality of Kacanik, dissatisfied by the decision of the District Court in Prishtina, exercised revision in the Supreme Court.
14. On 16 January 2012, the Supreme Court approved, as grounded, the exercised revision by the Municipality of Kacanik and quashed decisions (Judgment C.no. 41/2002 of 3 July 2008) and the Resolution Ac. no. 1030/2008, of 18 December 2008) of the lower instances and rejected as ungrounded the lawsuit of the Applicant which claimed that the same have acquired the right to use by $\frac{1}{4}$ part of the cadastral parcel 1121/2 (the place called " Oborr" with culture, arable land of II category, in area of 0.25 08 acres and the rest with infertile culture of 0.03, 09 acres, along in the total area of 0.28, 17 acres, recorded in the possession list no. 1177, Cadastral Zone in Kacanik). The Supreme Court reasoned that the decisions of the lower instances cannot be recognized as fair and legitimate since, according to the Supreme Court, regarding the factual findings verified by these instances, the substantive law is incorrectly applied when they have found that the plaintiff's claim (among whom is the applicant) is ungrounded.

Applicant's allegations

15. The Applicant alleges that the Supreme Court, by approving the revision exercised by Municipality of Kacanik, violated his constitutional rights guaranteed by Article 21 (General Principles) and Article 46 (Protection of Property).

Preliminary assessment of admissibility of the Referral

16. First, the Court considers whether the Applicant has met the eligibility criteria specified in the Constitution, and further specified in the Law and the Rules of Procedure. The Court considers that the Applicant has reasoned the Referral with a clear mention of the alleged violations. He specifically challenges the decision of the Supreme Court as a concrete act of the public authority subject to review. He clearly shows what he wants to achieve, and he attaches various decisions and other information and supporting documents.
17. Article 46.(3) of the Constitution specifically provides:

"No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest and is

followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.” See Paragraph 3 of Article 46.

18. “Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court” (*See, Paragraph 4 of Article 46*).
19. In this case the Applicant claims that the Supreme Court made both errors of law and fact in its decision claiming that the compensation awarded to his ancestor was not adequate and that the Supreme Court’s legal reasoning was flawed.
20. However, upon reviewing whether the applicant has supported his Referral with evidence, the Court notes that Article 48 of the Law of the Constitutional Court stipulates that “In his Referral the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”
21. On the other side, the Rule 36.2 of the Rules of Procedure stipulates that:

“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”.
22. Finally, Article 46 of the Law stipulates that: “*The Constitutional Court receives and processes a Referral in accordance with Article 113, Paragraph 7 of the Constitution if determines that all legal requirements have been met*”.
23. The Court reiterates that the case should be built on constitutional grounds so that the Constitutional Court may intervene.
24. In this regard, the Applicant does not indicate why and how the Supreme Court has violated his rights guaranteed by the Constitution and European Convention, nor has he provided any evidence for alleged violations of constitutional rights.
25. The Constitutional Court reiterates that it is not its task to deal with the errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decision taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-1).
26. The Court can only consider whether the evidence before the courts and other authorities has been presented in a correct manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the European Commission of Human Rights in the case Edwards v. United Kingdom, referral no. 13071/87, adopted on 10 July 1991)

27. In fact, the Applicant has not substantiated his allegations in constitutional grounds, which would point out why and how the Supreme Court has violated his rights guaranteed by the Constitution and the European Convention, and did not provide evidence that his rights and freedoms are violated by the Supreme Court. Thus, the Constitutional Court cannot find that the relevant proceedings in the Supreme Court, were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
28. From the abovementioned reasons, the Court finds that the Referral does not meet the criteria of Article 48 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure, therefore, is manifestly ill-founded, and pursuant to Article 46 of the Law, it cannot be received and processed.
29. Therefore, pursuant to Article 113.7 of the Constitution, Article 20 Law and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 of the Law on the Constitutional Court, Rule 36.2 (b) and (d) of the Rules of Procedure, on 20 September 2012, unanimously:

DECIDES

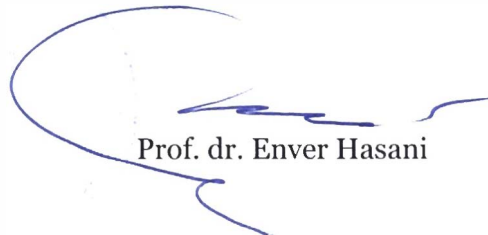
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. dr. Enver Hasani