



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 18 december 2015

Ref. No.:RK870/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI71/15

Applicant

Miftar Ahmetaj

**Request for Constitutional Review of Decision CML. no. 5/2014, of the
Supreme Court of Kosovo, of 23 December 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Miftar Ahmetaj from village Mushnikovë, Municipality of Prizren, who is represented by Mr. Rexhep Hasani, a lawyer from Prizren.

Challenged Decision

2. The Applicant challenges Decision CML no. 5/2014, of the Supreme Court of Kosovo, which was served on the Applicant on 26 January 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 46 [Protection of Property].
4. The Applicant requests that his identity is not disclosed without providing any justification for this request.

Legal Basis

5. Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on Constitutional Court (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 26 May 2015, the Applicant submitted via mail the Referral to the Constitutional Court (hereinafter: the Court).
7. On 3 August 2015, the President of the Court, by Decision GJR. KI71/15, appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
8. On 21 August 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 21 August 2015, the Court, to ascertain precisely the date of receipt of the challenged decision by the Applicant, it requested from the Basic Court in Prizren the copy of receipt of this decision.
10. On 31 August 2015, the Court received a copy of the requested return paper, indicating that the Referral was submitted to the Court within four (4) months provided by the Law.
11. On 14 October 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

12. On 20 March 2013, the Basic Court in Prizren rendered Decision on case E. no. 529/10, by which "Pro CreditBank", Branch in Prizren (hereinafter: the Bank) is announced the sole bidder of the immovable property which was the subject of the mortgage, presented as a guarantee for the loan received by the Applicant. By this decision, the objections of third parties, claiming that they are co-owners of this immovable property, were rejected, and they were instructed to exercise their possible rights in the contested procedure.
13. On 20 March 2013 (on the same date), the Basic Court in Prizren rendered conclusion, appointing the Bank as a buyer of the immovable properties, which have been the subject of mortgage, by setting the price for each immovable property.
14. On 20 March 2013, in the course of the same proceedings, the Basic Court in Prizren rendered Decision, E. no. 529/2010, according to which, the immovable properties sold in the third verbal public auction were delivered to the Bank. All immovable properties were evidenced in this decision according to cadastral data, whereas as per decision, after the decision becomes final, the Bank is allowed to register the property rights over the immovable properties delivered by the Court.
15. Against these two decisions of the Basic Court, the Applicant filed an appeal with the Court of Appeal due to violation of the execution procedure, violations of the substantive law and the decision on delivery of the Applicant's immovable property to the Bank, claiming that the delivered properties do not exclusively belong to the Applicant, but they are in the co-ownership with the third parties and his wife, and therefore could not be subject to alienation.
16. On 14 July 2014, the Court of Appeal of Kosovo rendered Decision Ca. no. 3875, which in the first part rejected the Applicant's appeal against the conclusion of the Basic Court E. no. 529/2010 of 20 March 2013, as inadmissible, while in the second part rejected as ungrounded the Applicant's appeal filed against Decision, E. no. 529/10, of the same court, of the same date by upholding it.
17. In the reasoning of the Decision, the Court of Appeal stated that "*against the conclusion, in accordance with Article 12.7 of the Law on Contested Procedure is not allowed any special appeal*" and the court assessed as correct the legal stance of the first instance court when it instructed the co-owners to exercise their possible property rights in accordance with the law in the contested procedure.
18. On 27 August 2014, the Applicant filed a request for protection of legality, with the Office of the Chief State Prosecutor due to: 1) a substantial violation of the execution and contested procedure and 2) erroneous application of the substantive law.
19. On 23 December 2014, the Supreme Court rendered Decision CML no. 5/2014, rejecting as ungrounded the request filed by the State Prosecutor for protection

of legality against Decision of the Court of Appeal and of the Basic Court in Prizren.

20. The Supreme Court, *inter alia*, states: “The legislator has not provided a possibility of filing the request for protection of legality regarding the composition of the panel”, and the composition of the panel was the basis for filing the request by the state prosecutor.

Applicant’s Allegations

21. The Applicant alleged that the Decision of the Supreme Court violated the rights guaranteed by the Constitution, and specifically the property right, because the mortgaged property did not belong to him in entirety, but it was in the co-ownership, and could not be alienated and nor be the subject to the court execution.

Assessment of the Admissibility of the Referral

22. In order to adjudicate the Applicant’s Referral, the Court first examines whether the party has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
23. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”

24. As mentioned above, the Court finds that the Applicant alleges that by challenged judgment was violated his right to protection of property (Article 46 of the Constitution), which has the following content:

Article 46 [Protection of Property]

1. *The right to own property is guaranteed.*
2. *Use of property is regulated by law in accordance with the public interest.*
3. *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.*
4. *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.*

5. *Intellectual property is protected by law.*

25. In respect to the above, the Court notes that the Applicant only stated the violation of this constitutional provision, without providing any evidence about the nature of that violation and the circumstances under which the alleged violation occurred, and he did not explain the constitutional implications of possible violations of the Constitution.
26. The Court notes that, the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying and substantiating by valid facts the actions of the public authority that are contrary to the constitutional norms, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the ECHR.
27. In this regard, the European Court of Human Rights, in case *S. v. United Kingdom*, stated that “to invoke protection under Article 1 of Protocol 1, a person should enjoy any right provided by domestic laws, which may refer to property rights” (submission 11716 of 1986), so it is not sufficient to file a claim and to allege violation.
28. Having considered the Applicant’s Referral and the facts presented therein, the Court finds that in all stages of the court proceedings, the Applicant's complaints have been of legal nature, and that the regular courts have provided adequate responses to these complaints. The allegations of violation of human rights protected by the Constitution for the first time were raised before the Constitutional Court.
29. The Court further emphasizes that it is not a fact finding court, it does not adjudicate as a court of fourth instance and is not merely an additional instance court. The Court in principle does not deal with the fact whether the regular courts have correctly and completely determined factual situation, or, whether, as in the case at issue, there was a violation of the substantive law in terms of the conduct of execution procedure.
30. For the Court are essential those issues on which depends the assessment of possible violations of the constitutional rights and not clearly legal issues as were in general the facts presented by the Applicant (See, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
31. The Court does not find any evidence of violation of Article 46 of the Constitution [Protection of Property] or that the challenged Decision indicates an evident arbitrariness. (See the Resolution of the Constitutional Court, Case KI128/12, of 12 July 2013, the Applicant *Shaban Hoxha*, in the request for constitutional review of Judgment Rev. no. 316/2011, of the Supreme Court of Kosovo).

32. The Court also notes that the request for protection of identity should be rejected because the Applicant has not supported this request by any evidence.
33. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of violation of the constitutional right for protection of property, therefore, in accordance with Rule 36, paragraph 2, item b, finds that the Referral should be rejected as manifestly ill-founded and to declare it inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47 of the Law and Rule 36 (2) (b) and Rule 56 (2) of the Rules of Procedure, on 14 October 2015, unanimously

DECIDES

- I. TO DECLARE the Referral 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.

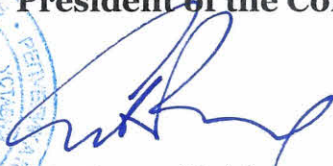
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi