



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 12 December 2013
Ref. No.: RK513/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI82/13

Applicant

Ekrem Musliu

**Constitutional review of the Decision of the Supreme Court of Kosovo,
Rev. 212/2011, of 15 April 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. Ekrem Musliu (hereinafter: the Applicant), with residence in Gjilan, represented by Mr. Shemsedin Piraj.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. 212/2011, of 15 April 2013, served on the Applicant on 29 April 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo (Rev. 212/2011 of 15 April 2013), which rejected as inadmissible the Applicant's revision because the value of the subject-matter in dispute, as stated by the plaintiff in his lawsuit, does not exceed the amount of 1.600 DM, respectively 800 €.
4. In this respect, the Applicant alleges that the abovementioned Decision has violated his rights guaranteed under Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 June 2013, the Applicant filed the Referral with the Constitutional Court (hereinafter: the Court) by mail.
7. On 20 June 2013, the President of the Court based on Decision GJR. KI 82/13 appointed Deputy - President Ivan Čukalović as a Judge Rapporteur. On the same date, the President of the Court, based on Decision KSH.KI 82/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 2 July 2013, the Court informed the Applicant of the registration of the Referral and requested the submission of the completed Referral form, the authorization for representation before the Constitutional Court and a copy of the Judgment of the District Court Ac. No. 41/11 of 6 May 2011. On the same day, the Court notified the Supreme Court of registration of the Referral.
9. On 23 July 2013, the Applicant submitted to the Court all the requested documents by mail.
10. On 18 November 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

11. On an unspecified date, M.B. filed a lawsuit with the Municipal Court in Gjiilan requesting the confirmation of the right of permanent use of a portion of the immovable property, cadastral plot no. 3173, with the surface area of 0.00.87 ha.
12. As a result, the Applicant filed a countersuit, requesting the confirmation of ownership of the immovable property, cadastral plot no. 3171 with surface area of 0.02.89 ha, and he also requested that part of this immovable property, with surface area of 0.00.87 ha, which was used by M.B., is to be transferred to the Applicant in possession and ownership.
13. On 3 November 2010, the Municipal Court in Gjiilan (Judgment C. no. 81/06) approved the request of M.B. as founded, thereby determining that said person has acquired the right of permanent use of the area of 0.00.87 ha, whereas the countersuit of the Applicant was rejected as unfounded.
14. Against the Judgment of the Municipal Court in Gjiilan (C. No. 81/06 of 3 November 2010), the Applicant filed an appeal with the District Court in Gjiilan.
15. On 6 May 2011, the District Court in Gjiilan by Judgment (Ac. No. 41/11) rejected the Applicant's appeal as unfounded and upheld the Judgment of the Municipal Court in Gjiilan (C. No. 81/06 of 3 November 2010).
16. The District Court in Gjiilan assessed that [...] *"based on this determined factual situation and based on the provision of Article 470 paragraph 1 of the Law on Property and Other Real Rights, the first instance court found that the statement of claim of the plaintiff – countersued [...] is well-founded, since the plaintiff has used this purchased immovable property since 1966 in an unobstructed manner until 2000 as a lawful and good faith possessor, knowing that this immovable property and also the part of the area of 87 square meters is his, since the same is within the fence, as he had agreed with the former owner – the seller [...]"*.
17. The District Court in Gjiilan concluded that *"[...] the first instance court, when rendering this Judgment did not violate the provisions of the contested procedure, of which this court mainly takes care, the factual situation was correctly and completely determined, and also the substantive law was correctly applied, therefore, the conclusion of this court is that the appeal's allegations do not stand [...]"*.
18. Against the Judgment of the District Court in Gjiilan (Ac. No. 41/11 of 6 May 2011), the Applicant filed a revision with the Supreme Court of Kosovo, alleging essential violations of the provisions of the contested procedure and erroneous application of the substantive law.
19. On 15 April 2013, the Supreme Court of Kosovo with its Decision Rev. 212/2011 rejected the Applicant's revision as inadmissible.

20. The Supreme Court of Kosovo in its Decision considered that the request for revision is inadmissible for the reasons that [...] "from the case file it results that the value of this dispute in the claim of the plaintiff-countersued is 300 DM [...] Pursuant to the provision of Article 382 para. 3 of LCP and Article 2, under item (J) of UNMIK Administrative Direction on allowed currency for use in Kosovo, which entered into force on 21 June 2001, the revision is not admissible in legal-property disputes, in which the statement of claim does not relate to monetary claims, delivery of object or performance of an act, if the value of the subject-matter in dispute, which the plaintiff has stated in his claim, does not exceed the amount of 1.600 DM, respectively €800."

Applicant's allegations

21. The Applicant alleges that the Decision of the Supreme Court Rev. No. 212/2012 of 15 April 2013 has violated the provisions of the Law on Contested Procedure.
22. According to the Applicant, the abovementioned Decision, by which the Supreme Court rejected as inadmissible the Applicant's revision for the reason that the value of the subject-matter in dispute which was stated by the Applicant in the lawsuit does not exceed the amount of 1.600 DM, respectively 800 EUR, is ungrounded and it has no support in the case file.
23. The Applicant further alleges that the Decision of the Supreme Court, by which the revision was rejected as inadmissible, presents for the Applicant [...] "a deprivation of the exercise of his fundamental right, therefore as such it should be treated as a violation of Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property) of the Constitution of the Republic of Kosovo."
24. The Applicant concludes requesting the Constitutional Court:

"I. TO DECLARE the Referral of the representative of respondent-counterclaimant, Ekrem Musliu from Gjilan, admissible.

II. TO DECLARE the Decision of the Supreme Court of the Republic of Kosovo in Prishtina, Rev. no. 212/2011 dated 15 April 2013 unconstitutional.

III. TO ORDER the Supreme Court of the Republic of Kosovo in Prishtina to proceed with the adjudication of the case according to the revision filed by the representative of the respondent-counterclaimant."

Assessment of the admissibility of the Referral

25. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
26. In this respect, Article 113, paragraph 7 of the Constitution 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.”

27. In addition, Article 49 of the Law establishes that *“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.”*
28. In the present case, the Court notes that the Applicant has sought recourse to protect his rights before the District Court in Gjilan and finally the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Judgment of the Supreme Court on 29 April 2013 and he filed his Referral with the Court on 10 June 2013.
29. Therefore, the Court considers that the Applicant is an authorized party and he has exhausted all legal remedies available to him under the applicable law and the Referral has been submitted within the four month time limit.
30. However, the Court should also take into consideration Rule 36 of the Rules of Procedure which provides:

“(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded.”

“(2) 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

[...]

31. The Applicant alleges that the Decision of the Supreme Court, which rejected as inadmissible the Applicant’s revision because the value of the subject-matter in dispute, as stated by the plaintiff in his lawsuit does not exceed the amount of 1.600 DM, respectively 800 EUR, is ungrounded and it presents for the Applicant [...] *“a deprivation of the exercise of his fundamental right, therefore as such it should be treated as a violation of Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property) of the Constitution of the Republic of Kosovo.”*
32. However, the Applicant doesn’t explain how and why the Decision of the Supreme Court, which rejected the revision as inadmissible, violated his rights guaranteed by the Constitution.
33. In this regard, the Constitutional 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, paragraph 28; see also case *KI70/11* of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

34. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial (see *inter alia* Case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
35. Based on the case file, the Court notes that the reasoning given in the last Decision of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts have not been unfair or arbitrary (see, *mutatis mutandis*, *Shub vs. Lithuania*, no. 17064/06, ECtHR, Decision of 30 June 2009).
36. For the above-mentioned reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and 56 (2) of the Rules of Procedure, on 18 November 2013, unanimously:

DECIDES

- I. TO REJECT the Referral as 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. TO DECLARE this Decision effective immediately

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović

Prof. Dr. Enver Hasani

