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

Prishtina, 17 August 2011
Ref. No.: RK132/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 63/09

Applicant

Bajram Santuri

Constitutional Review
of
Judgment of the Municipal Court in Prizren C. no. 368/2000 of 8 May 2003,
Judgment of the Supreme Court of Kosovo, Rev. 46/2005
(C.nr.99/07) of 28 December 2006
as well as
Swedish court decisions
and
Judgments No. 8329/06 and 9095/07
of the European Court of Human Rights

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Bajram Santuri from Prizren.

Challenged decisions

2. The applicant challenges Judgment of the Municipal Court in Prizren C. no. 368/2000 of 8 May 2003 and Judgment of the Supreme Court of Kosovo, Rev. 46/2005 of 28 December 2006.

3. He also complains about Decisions of the European Court of Human Rights (hereinafter: ECtHR), Nos. 8329/06 and 9095/07 of 26 September 2006 and 18 September 2007, respectively, in separate cases against Sweden.

Subject Matters

4. The Referral deals with two issues:

(1) Property issue

5. The Applicant alleges that the above decisions of the Kosovo courts concerning the property issue violate his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] and 37 [Right to marriage and Family] of the Constitution.

(2) Family right issue

6. The Applicant requests the Court to review the decisions of the ECtHR, by which his Applications Nos.8329/06 and 9095/07 were rejected on 26 September 2006 and 18 September 2007, respectively.

Legal basis

7. Article 113 (7) of the Constitution, Articles 20 and 22 (7) and (8) of the Law (No. 03/L – 121) on the Constitutional Court of the Republic of Kosovo, dated 15 January 2009 (hereinafter: the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

8. On 15 December 2009, the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

9. On 6 July 2010, the Referral was communicated by the Court to the Municipal Court in Prizren, which replied on 20 July 2010.

10. By Decision of the President (No. GJR. 63-09/10, of 23 December 2009), Judge Gjyljeta Mushkolaj was appointed Judge Rapporteur. On the same date, the President appointed, by Decision no. KSH. 63-09/10, a Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Snezhana Botusharova.

11. On 29 March 2011, additional information regarding the status of the case was requested from the Municipal Court in Prizren, which replied on 1 April 2011.

Background of the property issue

12. The Applicant's grandfather died in 1953 and left behind, from his first marriage, the Applicant's grandmother and father and, from his second marriage, a second wife and five children.

13. The Applicant complains that the property of his grandfather was transferred into the name of the second wife and shared with her five children, thereby excluding the Applicant's father. The Applicant does not mention, whether his grandmother got a share of the inheritance.

Summary of facts as to the property issue:

14. By Decision of the District Court in Prizren C. no. 50/55 of 25 November 1955, as lawful heirs of the Applicant's grandfather were declared: the grandfather's second wife, the Applicant's father and the five children of the grandfather's second wife (the grandfather's first wife is not mentioned at all in the said decision). The property concerned consisted of a house and yard at the address Petar Stambolic Street, no. 77; a parcel with a shop at the address Boris Kidric Street no. 65 in Prizren; and a parcel of 2 hectares in Llëka. According to the Court's decision all heirs were entitled to one seventh (1/7) of the entire property of the late grandfather.

15. By court settlement R. no. 279-56 of 14 May 1956 concluded before the District Court in Prizren between the Applicant's father on the one hand and the six other heirs on the other hand, it was decided that the Applicant's father would take the shop at Boris Kidric Street no. 65 in Prizren, while the others would take the house in joint ownership and the 2 hectares of land. But the six other heirs were ordered to pay the Applicant's father the amount of 34.000 Dinars until 1 November 1956. However, before the payment of the money became due, the Applicant's father died in June 1956. According to the Applicant, the six other heirs never paid the amount concerned.

16. By decision of the District Court in Prizren O – No. 123/56 of 24 October 1956 the Applicant's mother, who had a second minor son (the Applicant's brother) was declared the only heir. The Applicant's late father owned a parcel and shop at the address Boris Kidric Street nr. 65, in Prizren, with a value of 70.000 Dinars at that time. At the District Court in Prizren, the Applicant's mother stated, on her behalf and on behalf of her minor children, that she accepted the inheritance, and, pursuant to the law, also recognized the inheritance rights of her minor children.

17. On 1 June 1964, the Applicant's step grandmother, uncle and aunt sold the immoveable property in "Lleka" (which transaction was validated by the Municipal Court in Prizren) to KBI Progres "Lavërtaria" from Prizren. On 24 March 1966, KBI Progres "Lavërtaria" sold the property to a third party from the village Hoqë e Qytetit. The contract concerned was validated by the Municipal Court in Prizren, leg.no. 382/66 on the same day.

18. Upon the request of the Public Prosecutor, the Municipal Court in Prizren, by Judgment of p. no. 348/95 of 4 June 1998, annulled the sales contract, validated by the same Court by Decision leg. No. 920/64, of 1 June 1964 and signed between the Applicant's step grandmother, uncle and aunt and KBI "Progres", was annulled on the ground that the parties at the time were forced by municipal and committee activists to agree to the contract.

19. On 8 May 2003, the Municipal Court in Prizren, by Judgment C.no.368/00, approved the claim suit of the uncle and aunt of the Applicant and annulled the sales contract entered into between the KBI "Progres" and the third party from the village Hoqë e Qytetit, validated by the Municipal Court in Prizren, leg.no.382/66 of 24 March 1966. The Court also ordered KBI "Progres" and the third party to accept the judgment and transfer the ownership and possession rights to the Applicant's uncle and aunt, for half a share each, in the cadastral parcel no. 9437 in "Llëka" as indicated in the list of possessions no. 7275 KK in Prizren.

20. On 1 June 2004, the Municipal Court in Prizren, by Decision E. no. 14/2000, suspended the execution procedure, initiated by the Applicant in order to have the court settlement No 279-56 of 14 May 1956 concluded between the Applicant's father and the six other heirs of the Applicant's late grandfather executed, due to prescription. The Court ruled that the Applicant had filed the request for the execution of the court settlement of 14 May 1956 out of time, because more than ten(10) years had passed from the date of signature of the settlement; therefore, pursuant to Article 379(1) of the Law on Obligations, the Applicant's execution request had been prescribed.

21. The District Court in Prizren, by Decision Ac. no. 354/05 of 17 October 2005, rejected as ungrounded the Applicant's appeal against the decision of the Municipal Court, E. no. 14/2000 of 1 June 2004. The District Court concluded that the first instance court had decided correctly, when it suspended the execution procedure, because the Applicant had requested the execution of court settlement R. no. 279-56 of 14 May 1956 out of time.

22. Thereupon, the Applicant filed a request for revision with the Supreme Court, which on 15 August 2006, rejected the Applicant's revision request as being inadmissible, reasoning, that the Municipal Court in Prizren, by Decision E.nr 14/2000 dated 1 June 2004 had suspended the execution procedure initiated by the Applicant against the debtors, due to prescription and that the District Court, by Decision Ac.nr. 354/2005 of 17 October 2005 had rejected his appeal as unfounded, thereby upholding the decision of the Municipal Court of 1 June 2004.

23. On 28 December 2006, the Supreme Court of Kosovo, by Decision Rev. no. 46/2005, in the legal matter concerning the Applicant's step grandmother, uncle and aunt on the one side and KBI Progres "Lavërtaria" and the third party from the village "Hoqa e Qytetit on the other side, upheld the request for revision and the request of the Kosovo Public Prosecutor for protection of legality, thereby quashing the lower courts' decisions and referred the case back to the Municipal Court of Prizren for further adjudication under a new file number C 99/07.

24. On 27 February 2008, the Applicant proposed to the Municipal Court in Prizren to allow him to intervene in the proceedings of his uncle and aunt against KBI Progres "Lavërtaria" and the third party from the village "Hoqa e Qytetit.

25. The Municipal Court in Prizren, by Decision Agj. no. 17/2009 of 16 December 2009, approved as grounded the request of the Applicant in the capacity of plaintiff and intervener to have the judge, against whom the Applicant had filed a complaint, removed from case C. no. 99/07.

26. In reply to a request for information submitted by the Constitutional Court in Case KI 63/09, the President of the Municipal Court of Prizren stated that the request of the Applicant to take part in the proceedings in the capacity of intervener in Case C. no. 99/07, following the statements of the litigating parties, was approved, as registered in the process report of 7 July 2010.

27. So far, in Case C. no. 99/07, the President of the Municipal Court has scheduled 7 sessions, but some of them had to be postponed, because not all procedural preconditions had been met. The next session was scheduled for 16 September 2010, since the authorized representatives of the litigating parties had agreed to have more time for review and preparation, since this was a voluminous matter developing since the 50-ies of the last century. However, on 16 September 2010, the Municipal Court decided to suspend the proceedings in this matter, following the death of the fourth respondent, the Applicant's aunt.

28. On the basis of an appeal, submitted by the Applicant on 16 December 2010 against the suspension of proceedings, the case file was sent to the District Court of Prizren to be proceeded further. So far, no information has been submitted by the Applicant about any possible outcome of these court proceedings.

Applicant's allegations as to the property issue

29. The Applicant claims that, by Judgment of the Municipal Court in Prizren C. no. 368/2000 of 8 May 2003 and Judgment of the Supreme Court, Rev.46/2005 (C. No. 99/07) of 28 December 2006, his rights guaranteed by Articles 31 [Right to a Fair and Impartial Trial] of the Constitution have been violated.

30. The Applicant claims that the Municipal Court's Decision of 8 May 2003 has inflicted an injustice upon him, because he had not been a party to these proceedings, because the Presiding Judge was suspected of having family relations with the other parties in the procedure.

31. The Applicant claims that, by Judgment of the Supreme Court of Kosovo Rev. 46/2005 (C. Nr. 99/07), of 28 December 2006, he suffered a further injustice, because he could not join the proceeding, and thereby was prevented from enjoying an assumed right to shares, the Supreme Court not being fully aware of all the facts.

32. The Applicant further alleges that his rights as a child have been violated since 1956, because during that time his father shared the inherited property with his family members and, when his father died in 1956, he had not been able to realize his share, because he was a minor. According to the Applicant, the family members of his father have used and abused the situation by taking the share of the Applicant's father (their late brother).

33. The Applicant alleges that his father's share was not realized, because he died on 13 June 1956, whereas the share should have been realized on 1 November 1956, as indicated in the court settlement of 14 May 1956, concluded between the Applicant's father and his family members, despite the fact that the District Court in Prizren, by Decision O-nr. 123-56 of 24 October 1956, had ruled that his mother and he and his brother as minors were the only heirs of his late father's property.

Summary of facts as to the family issue:

On 16 February 2006, the social security services in Sweden decided to prohibit contacts between the Applicant and his wife and daughter, which decision was upheld by the second instance court, by Decision no. 554-06 of 13 March 2006.

34. Dissatisfied with the court decision, the Applicant filed an application, in two instances, with the ECtHR in Strasbourg, against the Swedish Government. The first application was filed on 27 March 2006 and the second one on 15 January 2007.

35. On 26 September 2006, a committee of three judges of the ECtHR, pursuant to Article 27 of the Convention, decided that Application No. 8329/06 was inadmissible, on the grounds that it had not found any violation of rights and freedoms guaranteed by the Convention or by its Protocols.

36. The second application was dealt with a committee of 3 judges of the ECtHR on 18 September 2007, pursuant to Article 27 of the Convention, which decided that Application No. 9095/07 was also inadmissible, on the ground that the current

complaint was in essence the same as the previous one (Application No. 8329/06) and did not contain any new facts.

37. The Applicant filed claims in regular courts and before the Higher Court of Sweden against three persons: the curator of the Lundt University Hospital, Neonatal Section of Women Department (Claim no. B1044-06 dated 2 May 2006), an employee of a kindergarten in Alvesta (claim no. B 155-06 of 10 October 2006) and another employee of the kindergarten in Alvesta (claim no. B 155-06 of the same day). In all three cases, the Applicant's claims were rejected by the above-mentioned courts.

Applicant's allegations as to the family issue:

38. The Applicant claims that the decisions of the ECtHR in Applications No. 8329/06 of 26 September 2006 and No. 9095/07 of 18 September 2007,were biased and unjust to him and his family, because, as the Applicant claims, decisions at hand were reached by ECtHR committees consisting of Swedish and Yugoslav judges, who protected their own interests against the Applicant's claim, which criticizes the Swedish state and the former Yugoslavia.

39. The Applicant further claims that the decisions of the regular courts in Sweden, overturning his claim against the Curator of the Lundt University Hospital and the two employees of the kindergarten in Alvesta, were a result of racism and xenophobia of the Swedish people and Sweden against foreigners. As evidence, the Applicant refers to a Book in Swedish called "Social Vanvard", and a number of CDs, records and pictures.

40. The Applicant claims that, for racist reasons and for material benefit, Swedish authorities have separated him from his first wife and his second wife and their baby, finding that the Applicant was allegedly in a mentally unstable condition to maintain his family.

Preliminary assessment of admissibility

(1) As to the property issue

41. The Applicant complains that, by Judgment of the Municipal Court in Prizren C. no. 368/2000 of 8 May 2003 and Judgment of the Supreme Court, Rev.46/2005 (C. No. 99/07) of 28 December 2006, his rights guaranteed by Articles 31 [Right to a Fair and Impartial Trial] of the Constitution have been violated.

42. As to the Applicant's claim, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it needs first to be examined whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

43. In this respect, the Court notes that, apart from the fact that the Applicant was clearly not a party to these proceedings, the relevant court decisions he is complaining about, are dated 8 May 2003 (Municipal Court decision) and 28 December 2006 (Supreme Court decision), respectively. This means that his complaints regarding these court proceedings relate to events prior to 15 June 2008, that is the date of the entry into force of the Constitution. The Court has, therefore, no jurisdiction to deal with these complaints.

44. It follows that this part of the Referral is incompatible "ratione temporis" with the provisions of the Constitution and the Law (see, mutatis mutandis, Jasioniene v. Lithuania, Application No. 415101/98, ECHR Judgments of 6 March and 9 June 2003; and, Case No. KI 61/09, "Adler Com" Sh.p.k., Constitutional Review of the Decision of Municipality of Gjakova, Judgment of the Constitutional Court of 16 December 2010).

45. The Court further notes that, by decision of 7 July 2010, the Municipal Court in Prizren, to which the case, in which the Applicant had not been a party, had been transferred by the Supreme Court by decision of 28 December 2006 under a new case number C. No. 99/07, approved the Applicant's request to join the proceedings in the capacity of intervener. However, when the Municipal Court suspended the proceedings by decision of 16 September 2010, the Applicant filed an appeal against the suspension decision with the District Court. The Applicant has not submitted any information about any possible outcome of these court proceedings.

46. In these circumstances, the Court refers to Article 113.7 of the Constitution and Article 47.2 of the Law, providing that the Applicant can only submit a Referral to the Court, after having exhausted all legal remedies provided by law. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see, inter alia, Resolution on Inadmissibility KI41-09 AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, mutatis mutandis, ECHR, Selmouni v. France, No. 25803/94, decision of 28 July 1999).

47. It follows that this part of the Referral is inadmissible.

(2) As to the family issue

48. As to the Applicant's allegation that his right guaranteed by Article 31 [Right to a Fair and Impartial Trial], and Article 37 [Right to Marriage and Family] of the Constitution have been violated, the Court emphasizes once more, that in order to be able to adjudicate the Applicants' complaint, it first needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

49. In this respect, the Court notes, that the events which occurred in Sweden as well as the decisions of the ECtHR, of which the Applicant complains, are not due to the public authorities in Kosovo, as required by Article 113.7 of the Constitution and 47(1) of the Law and, thus, fall outside the jurisdiction of the Court.

50. It follows that this part of the Referral must be rejected as being inadmissible "ratione personae".

FOR THESE REASONS

The Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56(2) of the Rules of Procedure, the Constitutional Court, unanimously, in its session held on 6 July 2011,

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 **President of the Constitutional Court**

Dr.Gjyljeta Mushkolaj Prof. Dr. Enver Hasani