



REPUBLIKA E KOSOVES
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina, 17 Jun 2010
Ref. no.:RK13/10

DECISION

Case No. KI. 06/09

Applicant X

Against

Supreme Court Judgment Nr. 215/2006
District Court Judgment Nr. 741/2005
Municipal Court Judgment Nr. 217/2004

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of:

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

Applicant

1. The Applicant is a resident of Kosovo.

Challenged Decisions

2. The Applicant challenges the decisions of the Supreme Court (nr.215/206 of 10 June 2008), District Court (Ac.nr.741/2005 of 28 March 2006) in P. and Municipal Court (C.nr.217/2004 of 1 July 2005) in P..

Subject matter

3. The Applicant claims that her right guaranteed by Article 31 of the Constitution (right to a fair and impartial trial) has been violated.

Legal basis

4. Article 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

5. The Applicant submitted her Referral to the Constitutional Court on 15 June 2009. She requests not to have her identity revealed in the decision of this Court and that the communication should be done only by telephone.

6. On 18 February 2010, after having considered the Report of the Judge Rapporteur, Gjyljeta Mushkolaj, the Review Panel, composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Kadri Kryeziu, on the same date, recommended to the full Court to reject the case as inadmissible.

Facts

7. On 31 June 2004, the Applicant filed a lawsuit against Y with the Municipal Court in P., requesting the court to order the defendant to pay to her the amount of 30,000 Euros as compensation for non-material damages, on the ground that he had deceived her, when he told her he would marry her and had sexual intercourse with her, while she was still a virgin. According to the Applicant, the defendant, despite his promise, married another woman and had, thus, violated her honor and dignity.

8. After having ordered a physical examination by a public medical institution in P., the Municipal Court rejected the Applicant's lawsuit as unfounded by decision of 1 July 2005. The Court reasoned that medical experts had not been able to scientifically explain the exact time of the sexual intercourse, during which she had lost her virginity, and that, therefore, the defendant's civil liability could not be established.

9. The Applicant appealed against this judgment to the District Court in P., stating that the Municipal Court had violated essential provisions of the Code of Civil Procedure; had erroneously and incompletely assessed the facts; and had

erroneously applied the material law. In the Applicant's submission, the case, should, therefore, be retried.

10. By decision of 28 March 2006, the District Court in P. confirmed the judgment of the Municipal Court and rejected the Applicant's appeal as unfounded. The Court reasoned that the Applicant's arguments that the judgment of the Municipal Court was based on an erroneous and incomplete assessment of the facts and an erroneous application of the substantive law were unfounded. The Court further stated that the first instance court had rightfully applied the substantive law and determined that the defendant was not liable to pay compensation for non-material damages. The Court assessed that the judgment was comprehensive and reasoned in accordance with Article 354 (14) of the Law on Contested Procedure.

11. On 21 August 2006, the Applicant submitted a request for revision to the Supreme Court, arguing that both the first and second instance judgments were reached in violation of essential provisions of the contested procedure, without an assessment of the facts and while erroneously applying the substantive law.

12. The Applicant apparently wrote to the Ombudsperson, complaining that the Supreme Court had not taken a decision yet. She has not revealed the outcome of the communication between the Ombudsperson and the Supreme Court

13. On 10 June 2008, the Supreme Court rejected the Applicant's request for revision as unfounded since the revision could not be requested because of an erroneous and incomplete assessment of the factual situation.

Applicant's allegations

14. The Applicant complains in her Referral of a violation of Article 31 (the right to a fair and impartial trial) of the Constitution, without elaborating the issue any further.

Assessment of the Admissibility of the Referral

15. Initially, the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).

16. In order for the Court to be able to determine a possible violation of the rights guaranteed by the Constitution, it is necessary for the Referral to include a procedural and substantive justification and supporting information and documentation, in accordance with Article 22.1 of the Law and Article 29(1)(f) and (g) of the Rules of Procedure of the Court. Concerning the Applicant's complaint that the proceedings before the other courts had not been fair and impartial, the Court needs to examine whether the Applicant has fulfilled these admissibility requirements.

17. The Court finds, however, that the Applicant fails to demonstrate in her Referral that her right to a fair and impartial trial has been violated and that her constitutional complaint was procedurally and substantively justified.

18. Moreover, the Court considers that there is nothing in the Referral indicating that the courts hearing the case lacked impartiality or that the proceedings were otherwise unfair. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Section 54(b) of the Rules of Procedure, unanimously,

DECIDES

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

Judge Rapporteur

President of the Constitutional Court

Dr.Gjyljeta Mushkolaj

Prof. dr.Enver Hasani