



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

Prishtina, 25 November 2013
Ref.no.:RK503/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI86/13

Applicant

Malush Krusha

**Constitutional Review of the Judgment of the Supreme Court in
Prishtina, Rev. no. 157/2011, of 4 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

The Applicant

1. The Applicant is Malush Krusha, from Gjakova (hereinafter: the Applicant), whom before the Court represents Bujar Krusha from Gjakova.

Challenged decision

2. The Applicant challenges Judgment of the Supreme Court in Prishtina Rev. no. 157-2011 of 4 April 2013, handed to the Applicant on 15 May 2013.

Subject matter

3. The subject matter of the Referral filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 4 April 2013 is the confirmation of the ownership rights on property.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (hereinafter: the Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 17 June 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo, and the same has been registered under number KI86/13.
6. On 20 June 2013, the President, by Decision (No. GJR. KI86/13), appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision (No. KSH. KI86/13), appointed the Review Panel composed of judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.
7. On 2 July 2013, the Court notified the Applicant and the Supreme Court on registration of the Referral.
8. On 13 September 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 15 June 2009, the Municipal Court in Gjakova approved the statement of claim of claimants I.Xh. and S.Xh. from Gjakova, and issued Judgment [C. no. 263/05], by which confirmed that the claimant I.Xh. is the owner of $\frac{1}{4}$ of the ideal share of the cadastral parcel No. 1098/1. By the same Judgment the Court obliged the respondent (the Applicant), to recognize this right to the claimant, and to allow the abovementioned registration of the property with the department of geodesy and cadastre on claimant's name.
10. The Municipal Court further held that S.Xh. is the owner of the cadastral parcel No. 1098/2, and the holder of rights of permanent use. The Court obliged the respondents G.K., N.Q., E.K., B.K., V.N., N.A., B.K., to recognize to the claimant

this right and enable the abovementioned registration of the property with the department of geodesy and cadastre on claimant's name.

- a) The Municipal Court in the operative part of the Judgment stated that during the proceedings, presentation of evidence and witness hearing, found that Mr. D. B. K., (late now), was the owner of the parcel No.1098, with a surface of 0.10,72 ha., and that after his death in inheritance proceedings, 1/2 of the ideal parcel of the mentioned immovable property, belonged to his sons H.K. and SH.K., and based on this physical division new parcels were formed with numbers 1098/1 (which belongs to son H.K.) and 1098/2 (which belongs to the other son SH.K).
- b) After H.K.'s death, by inheritance decision T. no. 62/60, parcel no. 1098/1 was inherited by his sons A.K., G.Z., I.Xh., as well as daughter N., who died in the meantime, but her share of property was inherited by sons B.K., and Sh.Xh., who, in the inheritance proceedings, were declared heirs of the 1/2 of the ideal share of the immovable property left by their legal predecessor.
- c) The Municipal Court held that, based on the case file, according to the contract [leg. no. 6/67], in the case file mentioned as contract on division of 30.01.1967, A. K., (father of the Applicant who inherited the late H.K., who was the first heir of D.B.K., and received parcel no. 1098/1), and the Applicant, shared the whole immovable property evidenced as parcels no.1098/1 and no. 1098/2, both in a surface of 0.10,72 ha.
- d) In this case, the Municipal Court concluded that the contract [leg. no. 6/67], as such has no legal basis, due to the fact that A. K. took the biggest share of the immovable property, what, according to the law, would not belong to him (meaning that the same has taken the entire cadastral parcels no. 1098/1 and no. 1098/2, in a total surface of 0.10,72 ha), even though, according to the above-mentioned inheritance decision T. br. 62/60, only 1/4 of the ideal share of the cadastral parcel no. 1098/1, CZ Gjakova town, belongs to him.
- e) To the Municipal Court's opinion the concluded contract on division [Leg.no.6/67], of 30.01.1967, is without any legal basis and that in no way produces legal effect to the present dispute, and has no impact on different decision-making regarding this issue.
- f) The Municipal Court in its Judgment concluded that: *„the allegations of the Applicant's representative, that the Applicant, has acquired his right to permanently use the two abovementioned parcels based on the inheritance decision T. no. 33/97, which was preceded by a contract concluded between him and his father, on 30.01.1967, partially stand and that only for the 1/4 of the ideal share of cadastral parcel no.1098/1, CZ Gjakova town, due to the fact that his legal predecessor (based on decision T.no.62/60), could have transferred it to the father (father of the Applicant), while father (Applicant's father) could have transferred it to the respondent (the Applicant) only 1/4 of the ideal share of the cadastral parcel no. 1098/1, CZ Gjakova town, since „de lege“ and „de facto“ he*

was the owner of this ideal share only, and in fact here is expressed the well known legal principle that: „no one can alienate-transfer to the other more rights than he is personally entitled to“.

11. On 28 July 2009, the Applicant filed a complaint against the decision of the Municipal Court in Gjakova [C. no. 263/05], of 15 June 2009. In the reasoning the Applicant claims that during the proceedings before the Municipal Court occurred substantial violations of the procedural provisions, erroneous and incomplete determined factual situation, as well as erroneous application of substantive law, proposing to the Court to annul the Judgment and remand the case for retrial.
12. On 10 December 2012, the District Court in Peja issued the Judgment [Ac. no. 352/09], by which rejected the Applicant's claim and upheld in its entirety the Judgment of the Municipal Court in Gjakova [C. no. 263/05], of 15 June 2009.
13. In its reasoning the District Court stated: *„the District Court found that the first instance court, after assessment of the evidence, has correctly and completely determined the factual situation, and by correct assessment of the evidence correctly applied the substantive law when found that the statement of claim of claimants is founded, and provided substantive legal and factual reasons on relevant facts, crucial for a just solution of this matter, which are approved by this court as well.“*
14. On 19 January 2011, the Applicant filed for a revision with the Supreme Court, against the Judgment of the Municipal Court in Gjakova [C. no. 263/05] and the District Court in Peja [Ac. no. 352/09].
15. On 4 April 2013, Supreme Court of Kosovo issued the Judgment [Rev.no.157/2011], by which rejected Applicant's request for revision as unfounded.
16. The Supreme Court in its Judgment stated: *„that it did examine the challenged Judgment of the Municipal Court, in terms of Article 215 of the Law, and thus found that the Applicant's request for revision was unfounded.“*

Applicant's allegations

17. The Applicant alleges that: *„according to the provision of Article 24 of the Constitution of the Republic of Kosovo, all citizens of Kosovo are equal before the law. Everyone enjoys the right to equal legal protection without discrimination“.*
18. The Applicant further alleges that, during the proceedings before the courts, the fundamental principle of equal treatment of parties in proceedings was violated.
19. The Applicant claims that the factual situation was not determined in a fair manner. That this situation has been determined based on the statements of the opposite party only. *„In this procedure I was not given the opportunity to give*

a statement and prove the fact that I am the only heir of my late father A.K., from Gjakova. “

20. The Applicant requests from the Constitutional Court:

„To annul the Judgment of the Municipal Court in Gjakova, C. no .263/05, of 31 January 2011, Judgment of the District Court in Peja, Ac. no. 134/2011, of 19 April 2011, and the Judgment of the Supreme Court of Kosovo, Rev.no.157/2011, of 4 April 2013, as unlawful decisions, by which my rights, guaranteed by the Constitution of the Republic of Kosovo, were violated in the most flagrant manner.“

Assessment of admissibility

21. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the admissibility requirements, which are laid down in the Constitution and further specified by the Law and Rules of Procedure.

22. In this regard, the Court refers to the Article 48 of the Law on Constitutional Court, which stipulates:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of a public authority is subject to challenge.”

23. Moreover, the Court also takes into account the Rule 36 (1) c) of the Rules of Procedure, which provides: *„The Court may only deal with Referrals if: (...) The Referral is not manifestly ill-founded.“*

24. Even though the Applicant alleges that the regular courts' decisions violated his rights, guaranteed by the Constitution and the laws of the Republic of Kosovo, he did not provide any relevant evidence or facts proving that the courts have violated his constitutional rights (see, Vanek vs. Slovak Republic, No. 53363/99, ECtHR decision on admissibility, of 31 May 2005.).

25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see García Ruiz vs. Spain [GC], No. 30544/96, par. 28, European Court of Human Rights [ECtHR] 1999-1).

26. In fact, the Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia*, European Commission of Human Rights, Edwards vs. United Kingdom, App. No. 13071/87, adopted 10 July 1991).

27. However, after having examined the documents submitted by the Applicant, the Constitutional Court did not find that the proceedings and decisions of the regular courts were in any way unfair or tainted by arbitrariness (see, *mutatis*

mutandis, see, Vanek vs. Slovak Republic, No. 53363/99, ECtHR decision on admissibility, of 31 May 2005.).

28. Thus, the Applicant failed to prove why and how his rights, guaranteed by the Constitution, were violated. The mere allegation of a violation of the Constitution cannot be considered as a constitutional complaint. Therefore, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Referral is manifestly ill-founded, and consequently inadmissible.


FOR THESE REASONS,

The Constitutional Court, pursuant to Rule 36 (1) c) of the Rules of Procedure, on 13 September 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



Altay Suroy



President of the Constitutional Court



Prof. Dr. Enver Hasani