



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

Pristina, 2 December 2013
Ref.no.:RK509/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI79/12

Applicants

Tanasko Djordjević and others

**Constitutional review of the Judgment of the Supreme Court of Kosovo
MIc Rev. 377/2009, of 8 May 2012**

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 Applicants are Mr. Tanasko Djordjević, Ms. Milorotka Jelić, Mr. Srboljub Djordjević, Ms. Serafina Djordjević, Ms. Jagoda Janković and Milorad Djordjević from Prizren, who by a power of attorney are represented by Mr. Bashkim Nevzati, a practicing lawyer from Prizren.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo MIc Rev. 377/2009, of 8 May 2012, served on the Applicants on 12 July 2012, which modified the Judgment of the District Court in Prizren and rejected the lawsuit of the Applicantst for the annulment of the contract of gift of the immovable property included in the contract of gift Leg. Nr. (Posl. Br. Ov.) 956/59, of 7 October 1959, concluded between the predecessor of the plaintiffs as the donor and the Municipality of Prizren, in the capacity of the donee.

Subject matter

3. The Applicants challenges the Judgment of the Supreme Court of Kosovo MIc Rev. 377/2009, of 8 May 2012, alleging that there has been a violation of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of Kosovo (hereinafter: the Law) and Rule 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

Proceedings before the Court

5. On 24 August 2012, the Applicants filed the Referral with Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 27 September 2012, the Constitutional Court notified the Applicant and the Municipal Court in Prizren, the District Court in Prizren and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions related to case no. KI79/12 was initiated.
7. By Decision of the President (No. GJR. 79/12, of 4 September 2012), Judge Ivan Čukalović was appointed Judge Rapporteur. On the same day, the President, by Decision no. KSH. 79/12, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Enver Hasani, members of the Panel.
8. On 19 November 2013 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 the facts

9. On 7 October 1959, a contract of gift Leg. no. 956/59 was concluded between Jovanka Miletić Dejanović, from Prizren, as the donor, on one side, and the then People's Council of the Municipality of Prizren, as the donee, on the other side, according to which the donor donated to the donee cadastral plots: no. 4/168/2 with surface area of 0.47,00 ha; no. 5/229 with surface area of 0.30,00 ha; no. 5/236 with surface area of 0.92,00 ha; and no. 5/316 with surface area of 0.38,00 ha in the cadastral zone of Prizren, which were registered in the name of the plaintiffs' predecessor.
10. On the basis of this contract, this parcel was transferred into socially owned property in the name of the Municipal Assembly of Prizren.
11. The former owner of the immovable property described above passed away on 15 March 1967, and was survived by Grozdana Djordjević, who also passed away and was survived by the plaintiffs in the regular courts and who are represented before the Court by the Applicant.
12. On an unspecified date during 1997, the heirs of the late Jovanka Jovanović initiated before the Municipal Court in Prizren, by a lawsuit, proceedings for the annulment of the contract and the return of the immovable property as they considered that the signing of the contract of gift was done under threats and it did not represent her own free will. The plaintiffs in these proceedings requested from the Municipal Court in Prizren to have ownership returned over cadastral plot no. 5/316 which is now registered in the name of MA Prizren as cadastral plot No. 2035 with surface area of 0.38,67 ha, cadastral plot 5/236 which is now registered in the name of AIC "Progress-Export" from Prizren, and cadastral plot no. 5070 with surface area of 0.94,74 ha which is registered in the name of M.K.
13. The Municipal Court in Prizren, after having examined the evidence and the testimony of the witnesses, issued Judgment C. Nr. 1067/97 of 12 December 2007, by which it approved the lawsuit and the claim of the plaintiffs and determined that the contract of gift of immovable property Leg. no. 956/59, of 7 October 1959, concluded between Jovanka Miletić Dejanović, from Prizren, as the donor, on one side, and the Municipality of Prizren, as the donee, on the other side, was null and void.
14. In its Decision, the Municipal Court in Prizren stated that:

"The Court assessed the statements of the mentioned witnesses because their statements completely match and prove the fact that the contract of gift was concluded under pressure and it is not an expression of the free will of the donor, and therefore as such it is absolutely null within the meaning of Law on Transfer of Real Property which is applicable Law pursuant to Regulation no. 1999/24".
15. Within the legal time limit, the respondents (Municipality of Prizren and AIC "Progress-Export") addressed the District Court in Prizren with separate appeals against this Judgment, thereby *"challenging the said Judgment due to*

essential violations of civil procedure provisions, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, proposing that the challenged Judgment be quashed and the case be remanded to the first instance court for retrial”.

16. On 1 December 2008, the District Court in Prizren, deciding upon appeal, issued Judgment Ac. no. 143/04, rejecting as unfounded the respondents' appeals and upholding the Judgment of the Municipal Court in Prizren C. No. 1067/97.
17. The District Court in Prizren, in its Judgment, among others, stated that *“by determining the decisive facts the first instance court has rightly decided when it confirmed that the contract of gift Leg. No. 956/59 is null. For this, in the Judgment of the first instance convincing reasons have been given, which this court entirely agrees with and acknowledges them as such.”*
18. Against the Judgment of the District Court in Prizren, the Public Prosecutor of Kosovo filed a request for protection of legality *“due to essential violations of the provisions of the contested procedure and erroneous application of the substantive law, proposing that the judgments of the lower instance courts be quashed and the matter be remanded to the first instance court for retrial”*. At the same time, the Municipality of Prizren also filed a revision *“due to essential violations of the contested procedure and erroneous application of the substantive law, proposing that the judgments of the lower instance courts be modified so that the claim of the plaintiffs is rejected or the case to be quashed and the matter to be remanded to the first instance court for retrial.”*
19. On 8 May 2012, the Supreme Court of Kosovo issued Judgment Mlc Rev. no. 377/2009, by which it found that the lower instance courts had erroneously applied the substantive law and it modified the judgments of those courts.
20. In the reasoning part of its Judgment, the Supreme Court stated that:

“The contract of gift which was concluded on 30.9.1959, as (it can be seen) from the copy of the contract that is in the case file, and in the concrete case the provisions of the Law of Contract and Torts, which entered into force on 1.10.1978, cannot be applied. The provisions of this law pursuant to its Article 1106 shall not apply to obligation relations which arose prior to the entry into force of this law.”

[...]

“Even if supposed that there was lack of will of the contracting party due to threat, misleading or fraud, according to the rules of the civil law, such contract would have been relatively null, and that the annulment of the contract for such reasons may be requested within one year of the day one has become aware of the cause of possibility of rescission, of cease of the cause of threat, and such right is forfeited after the objective time limit of three years”.

[...]

“For the fact that all the time limits for requesting relative nullity of the contract have elapsed, these being preclusive time limits, in the concrete case one may not request nullity of contract after the elapse of the time limit of over 38 years, as the plaintiffs did in the concrete case”.

Applicant’s allegations

21. The Applicants challenge the Judgment of the Supreme Court of Kosovo, MIc Rev. no. 377/2009, of 8 May 2012, alleging that *“pursuant to Article 54 of the Constitution of the Republic of Kosovo, everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.*
22. The Applicants allege that the Supreme Court by MIc Rev. no. 377/2009 has violated Article 46 [Protection of Property] of the Constitution, which states that that every natural and legal person shall have the right to enjoy his property and that no one shall be deprived of his property.

Admissibility of Referral

23. The Court first assesses whether the Applicants have met the admissibility requirements, laid down in the Constitution and further specified by the Law and the Rules of Procedure of the Court.
24. In that regard, the Court refers to Article 113 (7), which establishes:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of legal remedies provided by law.”

25. The Court also refers to Article 48 of the Law which provides:

“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 public authority is subject to challenge.”

26. In addition, Rule 36 (1) c) and (2) a) and b) of the Rules of Procedure provides:

“(1) The Court may only deal with Referrals 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:

(a) the Referral is not *prima facie* justified, or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”

27. In the present case, the Court notes that the Applicants challenge the Decision of the Supreme Court, by which, they allege that their rights and freedoms guaranteed by the Constitution and international instruments have been violated as a result of erroneous determination of the facts and erroneous application of the law by the Supreme Court.
28. After having reviewed the case in its entirety, the Constitutional Court cannot consider that the pertinent proceedings before the Supreme Court were in any way unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, ECtHR Decision as to admissibility of Application No. 17064/06, of 30 June 2009).
29. The Constitutional Court reiterates that it is not a court of fourth instance when reviewing decisions taken by the lower instance courts. It is the duty 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 [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
30. The Applicants have not presented any *prima facie* evidence indicating a violation of his constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility of Application no. 53363/99 of 31 May 2005). The Applicants do not in any way substantiate the claim that his rights guaranteed by Article 46 of the Constitution has been violated.
31. Therefore, the Court finds that the Applicants’ Referral do not meet the admissibility requirements, as the Applicant has failed to prove that the challenged decision has violated their constitutionally guaranteed rights and freedoms.
32. In all, the Court concludes that the Applicants’ Referral, pursuant to Rule 36.2 (a) and (b) of the Rules of Procedure is manifestly ill-founded and therefore inadmissible.

FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2 and Rule 56.2 of the Rules of Procedure, on 19 November 2013, by majority:

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

