



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

Prishtina, 5 July 2013
Ref.no.: RK458/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI105/11

Applicant

Bajro Aljimi

Constitutional review of the Judgment of the Supreme Court of Kosovo
Rev. No. 78/2008 dated 2 March 2011

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. Bajro Aljimi from the village of Gërriçar, Municipality of Prizren.

Challenged decision

2. Challenged decision is the judgment of the Supreme Court of Kosovo, Rev. No. 78/2008 of 2 March 2011 (which the Applicant received on 18 April 2011), amending the Judgment of the District Court in Prizren and rejecting the request to return possession over property which the applicant's father donated according to donation contract concluded on 2.12.1969 between Mustafa Aljimi, from the Village of Grnčare, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side.

Subject matter

3. The Applicant challenges the judgment of the Supreme Court of Kosovo No. 78/2008 of 2 March 2011 claiming that based on Article 54 of the Constitution there was a violation of Articles 23, 24 and 46 of the Constitution of the Republic of Kosovo, Article 17 of the Universal Declaration of Human Rights (hereinafter: UDHR) and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

4. Article 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) , Article 22 of the Law on the Constitutional Court of Kosovo (hereinafter: the Law) and Rules 28 and 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

Proceedings before the Court

5. On 1 August 2011 the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 23 August 2011, the President of the Constitutional Court (Decision No. GJR. 105/11 of 23 August 2011) appointed Judge Altay Suroy as Judge Rapporteur in the case and the Review Panel (Decision No. KSH. 105/11, of 23 August 2011) composed of judges: Snezhana Botusharova (presiding), Prof. Dr. Enver Hasani and Prof. Dr. Gjyljeta Mushkolaj (members).
7. On 12 October 2011 the Constitutional Court informed the Applicant and the Municipal and District Court in Prizren as well as the Supreme Court of Kosovo that a procedure was initiated for the constitutional review of the decision that is challenged by the Applicant and that the case was registered in the Court's respective register under No. KI105/11.
8. On 19 October 2011, the District Court in Prizren, in its response stated that it had expressed its opinion on this case in its Judgment and that it did not want to express anything further.
9. On 14 November 2012, the President (Decision No. KSH. 105/11, of 14 November 2012) appointed Judge Ivan Čukalović as a member of the Review

Panel instead of Judge Gjyljeta Mushkolaj, whose mandate as a Judge of the Constitutional Court had ended on 26 June 2012.

10. On 5 July 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

11. On 2 December 1969, a donation contract was concluded between Mustafa Aljimi, from the village of Gërničar, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side through which the donor donated to the receiver the cadastral plot No. 5248 in CZ „Keçishlak“, land Class VII, in the area of 8.88.05 ha, registered in possession list No. 8418 CZ Prizren.
12. According to the contract, this plot of land was transferred to social property owned by the Municipal Assembly of Prizren, as per possession list 8418 CZ Prizren.
13. The former owner of the aforementioned real estate died on 26 March 1987 and he was survived by his sons as his legal heirs: Iljaz, Bajro and Izet Aljimi and his wife Qazime Aljimi, maiden name Maksuti, who passed away on 12 June 2007 (names of third parties are mentioned for the benefit of the reading by the Court while in the final decision we will put initials only).
14. Heirs of the late Mustafa Aljimi initiated through a claim with the Municipal Court in Prizren proceedings to have the contract annulled and the real estate returned, since they considered that the contract was signed by threatening the donor that his children will not be allowed education and employment and that other repercussive measures against him will follow.
15. After having reviewed the evidence, the Municipal Court in Prizren issued its Judgment C. No. 563/07 of 19 October 2007, by which it approved the claim and the statement of claim of the plaintiffs and determined that the contract on donation of the real estate, Leg. No. 1787/69 of 2.12.1969, concluded between Mustafa Aljimi, late, from the village of Grnčare, as the donor, on one side, and the Municipality of Prizren, as the receiver, on the other side, was invalid.
16. The District Court in Prizren, deciding upon appeal of the Municipality of Prizren, against the judgment of the Municipal Court in Prizren, rendered judgment Ac. No. 534/2007 On 16.1.2008, rejecting the appeal of the Municipality of Prizren as ungrounded and confirming the judgment of the Municipal Court in Prizren, C. No. 563/07 of 19 October 2007.
17. Following the judgment of the District Court in Prizren the Applicant and his brothers filed a request to the Municipal Cadastral Office in Prizren to transfer ownership from the current owner Prizren MA to the new owners, Iljijaz Aljimi, Bajro Aljimi and Izet Aljimi. Subsequently, the Municipal Cadastral Office in Prizren issued Decision No. 027 No. 219/B of 7 February 2008, approving the request and allowing cadastral change, based on which the Applicant and his

brothers were registered as new owners and they were issued a certificate of ownership rights UL-71813068-12596.

18. After registration of ownership over the cadastral plot P. No. 71813068-05248-0, the Applicant and his brothers concluded a contract on the sale of the real estate with Arbnor Vërmica, so the Applicant and his brothers, on one side, as the sellers, and Arbnor Vërmica, on the other side, as the purchaser, on 3 March 2008 concluded a sales contract for the real estate, Leg. No. 1233/2008 dated 5 March 2008, registered as cadastral plot P. No. P. No. -71813068-05248-0 for the price of € 60,000.00 (sixty thousand Euros).
19. In the meanwhile, the Municipality of Prizren filed a request for Revision with the Supreme Court of Kosovo, as an extraordinary legal remedy, against the judgment of the District Court in Prizren, Ac. No. 534/2007 of 16 January 2008.
20. The Supreme Court of Kosovo approved the revision, Rev. No. 78/2008, of 2 March 2011, and rendered a decision on the merits of the case by: *“AMENDING judgment of the District Court in Prizren, AC. No. 534.2007, of 16.01.2008, and Judgment of the Municipal Court in Prizren C. no. 563/2007, dated 19.10.2007, thereby REJECTING as ungrounded the claim suit of plaintiffs requesting confirmation of nullity of contract on donation, signed by Mustafa Aljimi from the village of Germcare, as the donor, and the Municipality of Prizren, as donee, certified by the Municipal Court in Prizren by act Vr. No. 1787/1969, dated 02.12.1969.”*, among other things, stating in the reasoning the following:

“The confirmed fact is that for the donation contract, signed on 02.11.1969, as seen in the copy of the contract in the case files, provisions of the Law on Contract and Torts, which entered into force on 01.10.1979, and provisions of the Article 1106 of this Law, cannot be applied on contract relations established before the entry into force of this law.

The fact that the contractual party donated his land under the pressure of former municipal activists, as found by the first instance court, does not certify absolutely that such a contract is absolutely null, since according to the position of this Court, the threat mentioned was not of such nature which could pose serious hazard to the life, body or any important asset of the contractual party. As for the threat on the children on the contractual party that they would be prevented in completing education and employment, legal aid was available in competent bodies in a designated legal proceeding. Even if the assumption of lack of free will of the contractual party due to threatening, deception or fraud, according to general rules of civil law, such a contract would only be relatively invalid, and nullity of contract for such reasons may be claimed within a deadline of one year, from the day of acquiring knowledge on the cause of hazard, cease of cause of threat, while such a right loses objective timeline, when more than three years pass.

Due to the fact that all deadlines for claiming relative nullity of contract have been missed, deadlines which are preclusive, in the concrete case,

there cannot be a claim on nullity of contract after the expiry of the timeline of 40 years, as the plaintiffs did in the concrete case."

Applicant's allegations

21. The Applicant challenges the judgment of the Supreme Court of Kosovo, Ref. No. 78/2008 of 2 March 2011 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. Therefore, based on the foregoing, the applicant files the present Referral with the Constitutional Court of the Republic of Kosovo demanding:*
 - a) Protection of human rights due to violations of human rights guaranteed by the Constitution and national laws, and*
 - b) Protection due to violations of human rights as guaranteed by international instruments and agreements which are directly applicable in the Republic of Kosovo."*
22. The Applicant refers to Articles 23 [Human Dignity], 24 [Equality before the Law] and 46 [Protection of Property] of the Constitution which guarantee human rights. He also refers to Article 17 of the UDHR and Article 1 of Protocol 1 to the ECHR providing that every natural or legal person is entitled to his property and that no one shall be deprived of his property.

Admissibility of the Referral

23. The Applicant states that Articles 23 [Human Dignity], 24 [Equality before the Law], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Kosovo Constitution are the basis for his Referral.
24. The Court first assesses whether the Applicant has met the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure of the Court.
25. In this regard, the Court refers to Article 113 (1) which establishes:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."
26. The Court also refers to Article 48 of the Law which sets forth the following:

"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."
27. Furthermore, 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,

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

28. In the present case, the Court notes that the Applicant challenges the Decision of the Supreme Court which he alleges that it has violated his rights and freedoms guaranteed by the Constitution and other instruments as a consequence of erroneous determination of facts and erroneous application of the law by the Supreme Court.
29. After having reviewed the case in its entirety, the Constitutional Court cannot consider that the relevant proceedings in the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
30. The Constitutional Court reiterates that it is not a court of fourth instance, when considering the decisions taken by the lower instance courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
31. The Applicant did not submit any *prima facie* evidence showing a violation of his constitutional rights (see *Vanek v. Slovak Republic*, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does not substantiate his claim that his rights guaranteed under Articles 23, 24, 46 and 54 of the Constitution have been violated.
32. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements, neither on the merits nor on the admissibility of the Referral, as the Applicant has failed to prove that the challenged decision has violated his constitutionally guaranteed rights and freedoms.
33. In all, the Court concludes that the Applicant's Referral, pursuant to Rule 36.2 (a) and (b) of the Rules of Procedure, is manifestly ill-founded and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Rule 36.2 (a) and (b) of the Rules of Procedure, on 5 July 2013, by majority

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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court



Altay Suroy



Prof. Dr. Enver Hasani