



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 8 July 2013

Ref.no.:RK449/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI44/13

Applicant

Latif Latifaj

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.
19/2010, dated 21 January 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

Applicant

1. The Referral is submitted by Latif Latifaj, represented by Halil Ilazi, lawyer (the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 19/2010 of 21 January 2013, which was served on the Applicant on 5 February 2013.

Subject matter

3. The Applicant alleges that the Judgment of the Supreme Court of Kosovo, Rev. no. 19/2010 of 21 January 2013 (as well as the Judgment of the District Court in Gjilan Ac. no. 50/2009 and the Judgment of the Municipal Court in Gjilan C. no. 244/2007 of 10 November 2008), is biased, unfair and arbitrary due to violation of Article 31.1 and 2 (Right to Fair and Impartial Trial), Article 46.3 (Protection of Property), Article 54 (Judicial Protection of Rights), Article 22 (Direct Applicability of International Agreements and Instruments) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), as well as Article 6 paragraph 1 of the European Convention for Protection of Human Rights and Fundamental Freedoms and item 1 of the Protocol I of this Convention (hereinafter: "ECHR").

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 56.2 of the Rules of Procedures of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 29 March 2013, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the "Court").
6. On 16 April 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Enver Hasani.
7. On 10 May 2013, the Court notified the Applicant and the Supreme Court on the registration of the Referral.
8. On 25 June 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 25 October 2003, the Applicant filed a claim with the Municipal Court in Gjilan for confirmation of ownership of the real estate and annulment of sale-purchase contract of the real estate concluded in 2002 between the respondents, H.I. and Q.A.
10. On 17 March 2004, the Municipal Court in Gjilan (C.no. 560/03) by its judgment determined that the contract concluded between Q.A. and H.I. is "NULL AND VOID" and as such "*without legal effect.*" At the same time this decision obliged the respondent Q.A. "to deliver him into possession" the contested cadastral plot. According to this judgment, the Applicant had registered in his name the contested plot. The Municipal Court in Gjilan decided the matter in absence of the respondents, who were duly summoned to the hearing, while they did not justify their absence. This judgment became final on 21 May 2004 and executable on 7 July 2004.
11. On 18 October 2005, Q.A. filed a claim with the Municipal Court in Gjilan against the Applicant for confirmation of ownership of the contested property, based on the sale-purchase in 1986 and acquisition by prescription.
12. In the response to the claim, the Applicant requested that this to be considered as an adjudicated matter (*res judicata*) with the final judgment of the same Court, C. no. 560/03, pursuant to Article 333 paragraph 2 of the Law on Contested Procedure. He also challenged the legal basis of the acquisition of ownership by prescription, in which case the time limit of 20 years was not met and the fact that the real estate was not in bona fide possession, since the respondent was not allowed to transfer the real estate.
13. On 21 November 2006, the Municipal Court in Gjilan (Judgment C. no. 515/2005) approved the claim, confirming that the claimant "*based on the sale-purchase in 1986 and based on acquisition by prescription is the owner of the cadastral plot*" in this contest. The Court also "*obliges the respondents to recognize this right to the claimant as well as to refrain and endure so that the claimant based on this judgment registers this immovable property in his name.*" The Municipal Court in Gjilan concluded that Q.A. purchased the contested property on 30 October 1986 "*based on the verbal contract, respectively on manuscript*" from the Applicant's mother and that he paid the money for the plot in the amount of 15,000.00 Swiss Francs according to the agreement and he entered immediately into factual possession and use, which he possessed and used from that time until after 2000 without any obstruction. The Municipal Court in Gjilan also concluded that in 2002, Q.A., as factual possessor and with a purpose of transfer of ownership, had concluded the sale-purchase contract, certified by the Municipal Court in Gjilan on 19 July 2002, Vr. no. 1774/2002, of the contested plot with H.I. since this plot was under her name. The Municipal Court in Gjilan, regarding the Applicant's allegation that the matter was adjudicated, decided that this is not an adjudicated matter, because the subject matter and the claimants in the claim are different from the abovementioned case.

14. On 23 December 2006, the Applicant filed a complaint with the District Court of Gjilan against the Judgment of the Municipal Court, of 21 November 2006, due to substantial violations of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, proposing that the same judgment to be modified or quashed.
15. On 14 March 2007, the District Court (Decision Ac. no. 33/2007) quashed the judgment of the Municipal Court C. no. 515/2005 and returned the matter for retrial, because the judgment contained "*substantial violations of Article 354 paragraph 2 item 13 of LCP*" and erroneous and incomplete determination of the factual situation. The District Court did not consider that the matter should be determined as adjudicated matter.
16. On 10 November 2008, the Municipal Court in Gjilan (Judgment C. no. 244/2007) approved once more the claim of the claimant Q.A. against the Applicant. The Court held that "*the claimant gained the right to ownership according to the sale-purchase, (of 1986) since between the parties have been fulfilled the mutual obligations according to contract in manuscript for the sale –purchase of immovable property and this contract, in compliance with Article 73 of Law on Obligations, is final*", but not based on prescription. At the same time the Court considered that "*this contentious matter cannot be treated as an adjudicated matter pursuant to Article 333 paragraph 2 of LCP since in the adjudicated legal matter according to final judgment, the party in procedure was the respondent as a claimant and now the claimant H.J. as the respondent and the legal ground was annulment of contract, while in this legal matter besides the claimant and the respondent we have two other respondents, who were not at all involved in the previous procedure and then in this contentious matter it is about legal ground of certification of ownership and based on sale-purchase and acquisition by prescription.*"
17. On 27 December 2008, the Applicant filed a complaint against the Judgment of the Municipal Court in Gjilan C. no. 244/2007, claiming 1) substantial violations of the contested procedure; erroneous and incomplete determination of the factual situation; erroneous application of the substantive law. *Inter alia*, the Applicant in his complaint considered that this matter should be treated as adjudicated, that Q.A. did not possess the plot during the period of 20 years in bona fide and that in the present case "*neither the legal ground (Justus titullus) nor the way of acquiring (modus aquiredi) of the ownership were met, conditions which should (must) be fulfilled cumulatively in order that Q.A. could acquire ownership over the contested plot*".
18. On 28 September 2009, the District Court in Gjilan (Judgment Ac. no. 50/2009) rejected as ungrounded the Applicant's complaint and upheld the Judgment of the Municipal Court C. no. 244/07, by not necessarily repeating the arguments of this judgment, since the factual situation has been correctly and completely determined and based on this, it has been determined that the claimant is the owner based on the sale-purchase agreement of the contested real estate. Against this judgment, the Applicant filed a revision with the Supreme Court of Kosovo.

19. On 21 January 2013, the Supreme Court of Kosovo (Judgment Rev.no.19/2010) rejected as ungrounded the Applicant's revision against the Judgment of the District Court in Gjilan Ac.no.50/2009. The Supreme Court held that *"the second instance court by correctly and completely determining the factual situation has correctly applied the provisions of the contested procedure and the substantive law when it found that the claimant's statement of claim is grounded. The second instance judgment contains sufficient reasons on relevant facts for a fair adjudication of this legal matter."* *Inter alia*, the Court concluded that the matter was not adjudicated and that there is no erroneous application of the substantive law and that the claimant is undoubtedly the owner of the contested real estate, based on the concluded contract in handwritten form in 1986 and which has been met in entirety.

Applicant's allegations

20. The Applicant alleges that the Judgment of the Supreme Court of Kosovo Rev. no. 19/2010 dated 21 January 2013 as well as the Judgment of the District Court in Gjilan Ac.no.50/2009 of 28 September 2009 and the Judgment of the Municipal Court in Gjilan C.no.244/2007 of 10 October 2008 are partial, unfair and arbitrary.
21. The Applicant alleges that the contest regarding the challenged plot was adjudicated once by the final decision of the Municipal Court in Gjilan C.no.560/03 of 17 March 2004, by declaring NULL and VOID the contract between Q.A. and H.I. as well as by requesting the delivery of the challenged cadastral plot, which plot was handed over to the Applicant in the executive procedure.
22. The Applicant alleges that the Supreme Court, by Judgment Rev.no.19/2010 of 21 January 2013 and the District Court by Judgment Ac.no.50/2009, in a partial and arbitrary manner approved the judgment and arguments, which were concluded in the Judgment of the Municipal Court C.no.244/2007.
23. The Applicant alleges that in this case he was denied the rights, guaranteed by the Constitution of the Republic of Kosovo and specifically Article 31.1 and 2 (Right to Fair and Impartial Trial), Article 46.3 (Protection of Property), Article 54 (Judicial Protection of Rights), Article 22 (Direct Applicability of International Agreements and Instruments) as well as Article 6 paragraph 1 of the European Convention for Human Rights as well as Article 1, paragraph 1 of the Protocol I of this convention.

Admissibility of the Referral

24. In order to be able to adjudicate the Applicant's Referral, the Court observes that it needs to examine whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. Article 113.1 of the Constitution determines the general framework of the legal requirements in order for a Referral to be declared admissible. It provides:
- "1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*
26. Article 48 of the Law on Constitutional Court also provides that:
- "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 (2) of the Rules of Procedures provides that:
- "The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or; or
[...],
d) when the Applicant does not sufficiently substantiate his claim;
28. The Court notes that it is not its task to act as an appellate court or a court of fourth instance in respect to the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *Avdyli v. Supreme Court of Kosovo*, KI 13/09, 18 June 2010; *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).
29. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
30. In the present case, the Applicant was afforded ample opportunities to present his case and to challenge the interpretation of the provisions of pertinent laws which he considered incorrect, before the Municipal Court and certified in the District Court and Supreme Court during the appellate and revision proceedings. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair, partial or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. The Court notes that the Applicant has raised the *res judicata* matter, i.e. the adjudicated matter during the review of this case at municipal level, but also during the appellate proceedings in all instances. All instances have certified that in this case we do not have to do with such a matter.

32. The Court considers that there is nothing in the Referral, which indicates that the case lacked impartiality, or that the proceedings were in anyway unfair or which might be considered as a violation of the rights guaranteed by the Constitution or European Convention of Human Rights and its Protocols, which are directly applicable in Kosovo. The mere fact that the applicant is unsatisfied with the outcome of the case cannot in itself raise an arguable claim of a breach of Articles 31.1 and 2; Article 46.3; Article 54; Article 22 as well as Article 6.1; Article 1.1 of Protocol 1 of ECHR (see *Memetović v. Supreme Court of Kosovo* KI 50/10, 21 March 2011; see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezour-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
33. Therefore, the Constitutional Court considers that the Applicant's allegations are manifestly ill-founded, pursuant to Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

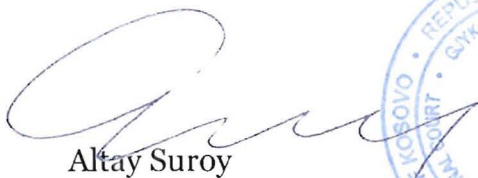
FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the law, Rule 36 (2) and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously:

DECIDES

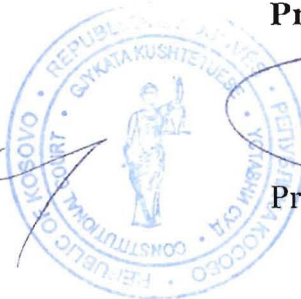
- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Prof. Dr. Enver Hasani