



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
G.JYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristine, 05 April 2012
Ref. No.: RK218 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 86/11

Applicant
Milaim Berisha

**Request for constitutional review of:
Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Milaim Berisha from Suhareka, residing at Mulla Nura St, no number, in Suhareka, duly represented by Mr. Avdullah Robaj, a lawyer from Prishtina

Challenged decisions

2. The final Decision challenged at the Constitutional Court by the applicant is Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011, which the party claims to have received on 11 March 2011, the applicant also has requested constitutional review of the Judgment of the Municipal Court in Suhareka, C. nr. 65/08, dated 18.07.2008, and Judgment of the District Court in Prizren, Ac. nr. 379/08, dated 01.12.2008,

Subject matter

3. The subject matter of the referral that was submitted to the Constitutional Court of the Republic of Kosovo on 28 June 2011 is the constitutional review of the Judgment of the Municipal Court in Suhareka, C. nr. 65/08, dated 18.07.2008, of the Judgment of the District Court in Prizren, Ac. nr. 379/08, dated 01.12.2008, and of the Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, date 1.3.2011. which, according to the Applicant, have violated his rights guaranteed by the Constitution of Kosovo and his property has been alienated by being unlawfully transferred to another person, and he requested the Constitutional Court to annul the said judgments.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (hereinafter referred to as the "Law"), and Section 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 28 June 2011, the Constitutional Court received the Referral of Mr. Milaim Berisha from Suhareka, submitted by his representative, Mr. Avdullah Robaj, a lawyer from Prishtina, and registered it under no. KI 86/11.
6. On 17 August 2011, by Decision GJ.R 86/11, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision KSH. 86/11, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 5 August 2011, the Constitutional Court notified the Supreme Court of Kosovo, the District Court in Prizren, the Municipal Court in Prizren, and Applicant's representative, the lawyer Mr. Avdullah Robaj, regarding the registration of the case.

8. On 11 August 2011, the Constitutional Court received a reply from the District Court in Prizren, which submitted copies of the three Resolutions the Applicant is challenging before the Constitutional Court.
9. On 12 September 2011, the Constitutional Court received an additional document from the District Court in Prizren – the Decision of the municipality of Suhareka, nr. 360-483/91, dated 23.01.1992, which was part of the case file before this Court.
10. On 25 November 2012, 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 facts

11. The Applicant, Mr. Milaim Berisha, was in employment relationship with IGK “Ballkan”, seated in Suhareka, from 1972 to 14.09.1990, where he was performing the duties of the inspection foreman.
12. On 13 October 1998, IGK “Ballkan” announced a competition for the allocation of 76 apartments in “Ballkani” neighborhood, in Suhareka, built with the contribution of its workers, IGK “Ballkan”.
13. On 1 August 1989, pursuant to Decision no. 5842 of IGK “Ballkan”, Mr. Milaim Berisha acquired the right to use the apartment in the area of 73.95 m², since he was ranked ninth in the list of employees eligible for the apartments allocated by their employer.
14. From the documents of the case file submitted with the Constitutional Court, it cannot be determined if Mr. Milaim Berisha had concluded a contract on the use of the apartment, whereas, according to his personal claim, he had been using this apartment until 29.01.1992.
15. On 27.09.1990, the imposed employment authority (temporary measures of that time), through Decision nr. 6112/9, had terminated Mr. Milaim Berisha’s employment relationship since, according to the Decision, he had committed a grave violation of duties. From the documents of the case file, it doesn’t result that Mr. Berisha has filed any appeal against this decision.
16. On 23.01.1992, the Secretariat for Urbanism and housing and municipal issues of Suhareka municipality issued Resolution nr. 360-483/91 ordering Mr. Milaim Berisha to vacate the apartment he is living in and remove all the furniture within 10 days from the reception of this decision.
17. It is said in the reasoning part of this resolution that it had been issued at the request of IGK “Ballkan” and considering the fact that the Court of Associated Labor in Gjakova, through Decision nr. 203, dated 12.10.1989, had annulled the decision of workers’ council nr. 5836, dated 3.07.1989, and the decision of the Commission for the allocation of apartments of IGK “Ballkan”, dated 10.07.1989.
18. In 1993, the apartment that Mr. Milaim Berisha was ordered to leave had been privatized by Mr. Jovanović Zoran from Suhareka, and, according to the sales

contract, certified at the Municipal Court in Suhareka ov. br. 1976/93, he had also won the right of ownership over the apartment.

19. On 16.11.2006, according to the lawyer Avdullah Robaj, Mr. Milaim Berisha's representative, the UNMIK's Directorate on Housing Issues – known as UN - HABITAT – through Decision HPCC/78/2006, had recognized Mr. Milaim Berisha the right of ownership over the disputed apartment, but he had not presented this decision to the Constitutional Court as evidence and it is not at all in the documents of the case file submitted with the Referral.
20. On 28.07.2007, Mr. Zoran Jovanović authorized Mr. Agim Demiri, a Bachelor of Law from Suhareka, to conclude on his behalf, in the capacity of the owner of the apartment, a sales contract with Mrs. Valbonë Baralija from the village of Bukosh, Suhareka municipality, in the capacity of the buyer, for the apartment located in Suhareka in Fidanishte neighborhood, apartment no. 8, building block 3, second floor, with an area of 73.95m².
21. On 30.08.2007, this contract concluded and signed between contracting parties Mr. Agim Demiri, as the representative of Mr. Zoran Jovanović and Mrs. Valbonë Baraliju, was certified at the Municipal Court in Suhareka, and the compensation tax in relation to the transfer of the real estate property in the amount of 200.00 Euros had been paid to the Directorate for Economy and Finance of Suhareka municipality.
22. On 8 October 2007, UNMIK's Directorate on Housing Issues in Prishtina sent a letter to the President of the Municipal Court in Suhareka and to the President of the District Court in Prizren notifying them that Mr. Milaim Berisha's complaint concerning a housing dispute, in which Mr. Zoran Jovanović is the opposing party, is under procedure, and that these courts are prohibited to certify any contract concluded in relation to this real estate, except if the parties to the dispute, Mr. Milaim Berisha and Mr. Zoran Jovanović, would agree to such a contract.
23. This Directorate sent this request to both courts on 8 October 2007, but in fact, a sales contract between Mr. Zoran Jovanović, represented by Mr. Agim Demiri, in the capacity of the seller, and Mrs. Valbonë Baraliju, in the capacity of the buyer of the disputed apartment, had already been concluded and certified at the Municipal Court in Suhareka on 30 August 2007, and according to the documents submitted with the Constitutional Court, this contract was never annulled.
24. On 18.07.2008, acting pursuant to Mr. Valbonë Baraliju's statement of claim, the Municipal Court in Suhareka issued Judgment C. nr. 65/2008, APPROVING Mr. Baraliju's statement of claim and COMPELLING Mr. Milaim Berisha to deliver the real estate – the apartment located in Fidanishte neighborhood in Suhareka, to Mrs. Valbonë Baraliju, who is the owner of this apartment pursuant to the sales contract confirmed at the Municipal Court in Suhareka under VR. nr. 2871/07, dated 30.08.2007.
25. On 01.12.2008, the District Court in Prizren rejected as ungrounded the complaint of Mr. Milaim Berisha's authorized person and left in force the Judgment of the Municipal Court in Suhareka C. nr. 65/08.
26. On 1.3.2011, the Supreme Court of Kosovo **rejected** as ungrounded respondent's Revision against the Judgment of the District Court in Prizren, Ac. nr. 379/2008, dated 1.12.2008, and it had finally determined Mrs. Valbonë Baraliju as the lawful owner of the real estate – the disputed apartment.

27. Finally, unsatisfied with Judgments of competent courts, Mr. Milaim Berisha submitted a referral with the Constitutional Court on 28.06.2001, requesting the Court to annul all Judgments and declare them unconstitutional and unlawful

Applicant's allegations

28. The Applicant claims that the abovementioned judgments of the Municipal Court in Suhareka, of the District Court in Prizren and of the Supreme Court of Kosovo have violated his rights guaranteed by Article 21, paragraphs 1, 2, 3 and 4, Article 31,
29. The Applicant claimed that the Municipal Court in Suhareka, while confirming the sales contract between contracting parties Mr. Jovanović Zoran, in the capacity of the seller, and Mrs. Valbonë Baraliu, in the capacity of the buyer, on 30.8.2007, in fact carried out an unlawful juridical task because it legitimized Mr. Jovanović as the owner of the apartment, which was the subject matter of this contract, even though its real owner was Mr. Milaim Berisha, who had the right of using this apartment since 1989. The Municipal Court in Suhareka, approving the lawsuit of the plaintiff Valbonë Baraliu, obliging Mr. Berisha, as the respondent, to return the apartment to her possession, and the District Court and Supreme Court, rejecting Mr. Berisha's complaint, respectively revision, repeated the wrong decision of the Municipal Court depriving him the enjoyment of the right to the disputed apartment

Assessment of the admissibility of the Referral

30. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, in the Law on the Constitutional Court, and in the Rules of Procedure of the Constitutional Court.
31. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

*"Individuals are authorized to refer **violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.**"*
32. The Court also takes into account:

Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:

“(1) The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.
33. The Constitutional Court is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and in this case of administrative authorities as well, and that the role of the Constitutional 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).

34. From facts submitted with the referral, it appears that the applicant has used all legal remedies available, and in fact, none of the regular courts has given him any right on his claims, the Court, therefore, considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or that proceedings were otherwise unfair.
35. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.
36. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (see Judgment ECHR App. No 13071/87 *Edwards v. United Kingdom*, para 34, of 10 July 1991).
37. The mere fact that applicants are 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 vs. Hungary*, Judgment of 26 July 2005).
38. In these circumstances, the Applicant has not "sufficiently substantiated his claim nor the violation of Article 46 of the Constitution (The Right to Property), because facts presented by him do not show in any way that regular courts of the three instances had denied him rights guaranteed by the Constitution, then cannot be considered that applicant have fulfilled the abovementioned established admissibility requirements and therefore the Referral is inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 36 of the Rules of Procedure, on 25 November 2011,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

