



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

Pristina, 29 May 2017
Ref. no.: RK1069/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI101/16

Applicant

Ukë Balaj

**Constitutional review of Judgment Rev. no. 94/16 of the Supreme
Court of the Republic of Kosovo, of 11 May 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Ukë Balaj from Prishtina (hereinafter: the Applicant), who is represented by lawyer Xhevat Bici.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 94/16 of the Supreme Court of the Republic of Kosovo, of 11 May 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121, on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 July 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 August 2016, the President of the Court appointed Judge Ivan Ćukalović as Judge Rapporteur, and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 2 September 2016, the Court notified the Applicant about the registration of the Referral. At the same time, the Court sent a copy of the Referral to the Supreme Court.
8. On 4 April 2017, the Review Panel considered the report of the Judge Rapporteur and made a unanimous recommendation to the Court on the inadmissibility of the Referral.

Summary of general facts

9. On 20 January 1990, the Applicant in a capacity of a buyer entered into a sale-purchase contract of the immovable property, the cadastral parcel no. 506, with a surface area of 0.44,66 ha and the cadastral parcel no. 505, with a surface area 0.88, 56 ha, both in the Municipality of Gllgovc (hereinafter the disputed immovable properties) with Hajriz Tahiri, in a capacity of a seller. This agreement was signed before a lawyer and was not certified in the competent court.
10. On an unspecified date, the Applicant filed a claim for confirmation of ownership over the disputed immovable property before the Municipal Court in Gllgovc, while the other party responded with the counterclaim.

11. On 10 December 2012, the Municipal Court in Glogovc (Judgment C. no 43/2011) in the first part of the enacting clause rejected as ungrounded the Applicant's statement of claim to establish that he is the owner of the disputed immovable property based on the sale-purchase contract and adverse possession, and to oblige the respondent to recognize this right to the claimant and to allow him the registration in certain cadastral books.
12. By the same judgment, in the second part of the enacting clause is approved as grounded the counter statement of claim of the respondent Hajriz Tahiri and it is determined that he is the owner of the immovable property described above as based on the decision of the commission for consolidation no. 461-228, of 2 July 1985; the Applicant is also obliged to recognize this right to the respondent.
13. The Applicant timely filed an appeal with the Court of Appeal of Kosovo against (Judgment C. no. 43/2011) of the Municipal Court in Glogovc.
14. On 1 January 2016, the Court of Appeal of Kosovo (Judgment CA. no. 1336/2013) rejected as ungrounded the Applicant's appeal and upheld the above-mentioned judgment of the first instance court.
15. Against the Judgment of the Court of Appeal of Kosovo, the Applicant timely filed a request for revision with the Supreme Court of the Republic of Kosovo on the grounds of the substantial violations of the contested procedure provisions and erroneous application of the substantive law, with a proposal that the two above-mentioned judgment be modified, so that the claimant's statement of claim is approved as grounded.
16. On 5 May 2016, the Supreme Court of the Republic of Kosovo (Judgment Rev. No. 94/2016) rejected as ungrounded the Applicant's request for revision, along with a detailed reasoning.

Applicant's allegations

17. The Applicant alleges that: *"The sale-purchase contract was concluded between the claimant and the respondent, who are nephew and uncle, but the contract was verbal and it was fulfilled by both parties. The price was paid, he entered into possession, a house measuring a surface area of 15 are has been built, the respondent has never filed any claim to hinder the possession etc."*
18. The Applicant further alleges that *"the courts took into account the allegations of the respondent that it has to do with a pledge contract, which is not true. There is no contract in writing nor witnesses that were present. The respondent admitted that he has received the money from the sale and he never returned it. After 2004, he entered forcibly in this property."*

19. The Applicant reasons his allegations of violation of his constitutional rights in the following manner: *“The right to property under Article 46 of the Constitution of the Republic of Kosovo has been violated because claimant Ukë Balaj bought parcel no. 506, from table 27, and parcel no. 505, from table 28, CZ Qikatovë e Re, from the respondent, and they did not certify that sale contract, of 1984, in the court. The claimant had it in possession and use for decades.”*

Admissibility of the Referral

20. The Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and in the Rules of Procedure.

21. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

(1) The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

(7) 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.

22. The Court further refers to Article 48 [Accuracy of the Referral] 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.

23. Furthermore, the Court takes into account Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which foresees:

(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(a) the referral is not prima facie justified.

24. In this case, the Court considers that the Applicant is an authorized party to submit a Referral to the Constitutional Court and that he has exhausted all the effective legal remedies. Therefore, he has met the procedural requirements of Article 113.7 of the Constitution. However, to determine the admissibility of the Referral, the Court must further assess whether the Applicant has fulfilled the

requirements of Article 48 of the Law and the admissibility requirements established in Rule 36 of the Rules of Procedure.

25. In fact, the Court notes that the Applicant refers to violation of Article 46 of the Constitution. However, he does not explain why he considers that the decisions of the regular courts violated the provisions that guarantee his rights and freedoms.
26. The Court considers that the Applicant has build his case on legal basis, namely on erroneous determination of factual situation regarding the validity of the contract at issue, as well as on the erroneous assessment of evidence by the regular courts.
27. First of all, the Court notes that the Applicant reiterates the same allegations which he mentioned in the proceedings before the regular courts, where the Municipal Court in Glllogoc (Judgment C. no. 43/2011) gave a detailed response to all these Applicant's allegations, reasoning among the other:

„ ... The contract compiled in written form on 20.01.1990 between the litigants on the sale-purchase of the immovable property, which was presented to the court by the claimant as an evidence, is invalid, because as it is provided by the provisions of Article 4, paragraphs 2 and 3, of the Law on Transfer of Immovable Property, according to which the contract for transferring the right on the immovable property between the holders of the ownership right is reached in written form whereas the signatures of the contractors are confirmed by the court, according to Article 1 of UNMIK Regulation no. 1999/24 that provision is applicable...“

28. The Court further notes that the Court of Appeal (Judgment CA. no. 1336/2013) further explained in a more detailed way the factual situation, the right of adverse possession and validity of the contract, explaining that:

“Based on the determination of the factual situation it results that the elements of the contract on sale, ... because the contract is fictive, covering the contract of pledge. According to the statement of the lawyer who compiled the contract, the contract in question is of pledge by which the claimant – counter respondent secured his requests, if the debt would not be paid; he would become the owner of the immovable property in question. This kind of contract is not allowed within the meaning of Article 103 of LOR and does not have legal support. As consequence of this, the claimant – counter claimant cannot realize the ownership right based on possession, pursuant to Article 28.4 of the Law of Property and Other Real Rights. There is no bona fide since the claimant – counter respondent entered in the possession of the immovable property in question based on the fictive contract on sale which was a simulator because it covered the contract of pledge. The holder of the immovable property cannot acuire the ownership right in illegal manner and in possession in bona fide.”

29. Finally, such a legal opinion was also accepted by the Supreme Court (Judgment Rev. No. 94/2016) which reasoned at length that the Applicant has never become the owner of the disputed property:

“The Supreme Court too shares the same opinion that the statement of claim of the claimant by which he requested to be confirmed as the owner of the cadastral parcel in question based on the above mentioned contract which in fact covers the contract of pledge as a guarantee for the debt of the respondent which was taken over by the claimant, is ungrounded, and also the fact that he used these parcels until 2003, does not result in the fulfillment of the legal requirements for acquisition of the ownership right in his favour based on the possession, since the pledge is only a guarantee, respectively, a tool for securing the request for money, and cannot be used for acquiring the ownership, therefore, based on this fact and the fact that the contested contract is not legally valid, due to the reasons provided above, it results that the claimant did not acquire the ownership right of the parcels in question, based on any of the above mentioned legal basis, therefore, both courts of lower instances rightfully found that the statement of claim of the claimant is ungrounded. On the other hand, the respondent, without any doubt, proved his ownership right over the contested parcels, based on facts that the minute of the consolidation commission, these parcels which he registered as his property in the relevant cadastral books, were allocated to him.”

30. The Court reiterates that it is not its task to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of his constitutional rights and freedoms protected by the Constitution, the Applicant must present a reasoned allegation and a convincing argument.
31. The Court first recalls that it is not the role of the Constitutional Court to determine whether certain types of evidence are allowed, what evidence should be taken, nor to specify what evidence is acceptable and what is not. That is the role of the regular courts. The role of the Constitutional Court is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see Case of *Khan v. the United Kingdom*, Application no. 35394/97, paragraphs 34-35, ECtHR Judgment of 12 May 2000).
32. In addition, the Court also reiterates that the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, it cannot act as a “fourth instance court” (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

33. The Court considers that the Applicant had the opportunity to present before the regular court the material and legal reasons for the resolution of the dispute, his arguments were duly heard and duly examined by the regular courts; the proceedings viewed in entirety were fair and the decisions rendered were examined in detail.
34. The Court further notes that the Applicant disagrees with the outcome of the proceedings before the regular courts. However, the mere disagreement of the Applicant with the outcome of the proceedings conducted by the regular courts cannot of itself raise an arguable claim for breach of right to fair and impartial trial (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
35. The Court considers that the Applicant did not accurately and specifically state violation of his rights and did not explain how and why the judgment of the Supreme Court may have violated his constitutional rights; he only emphasized that there has been a violation of his constitutional rights. He did not provide any *prima facie* evidence which would indicate a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, no. 53363/99, ECtHR, Decision, of 31 May 2005).
36. The Court considers that the Applicant has not substantiated the allegations that the relevant proceedings have been in any way unfair or arbitrary, and that the challenged decision violated his constitutional rights and freedoms guaranteed by the Constitution and ECHR (see: *mutatis mutandis: Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
37. Therefore, the Court considers that the admissibility requirements, as established in the Constitution, further specified in the Law and foreseen in the Rule of Procedure, have not been met.
38. Therefore, the Court concludes that his Referral is inadmissible, as manifestly ill-founded on constitutional basis.

FOR THESE REASONS

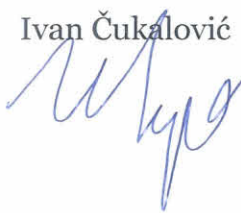
The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (2) (a) and 56 of the Rules of Procedure, on 4 April 2017, unanimously

DECIDES

- I. TO DECLARE the Referral 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. This Decision effective immediately;

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

