



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristine, on 18 October 2012
Ref.No.:RK315/12

RESOLUTION ON INADMISSIBILITY

in

Case no. 121/11

Applicant

Arjana Syla

**Constitutional review of the Judgment of the Supreme Court of Kosovo
Rev. 134/2010, of 17 May 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 Arjana Syla residing in village Gllamnik, Municipality of Podujeva, represented by lawyer Sabri Kryeziu from Lipjan.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. 134/2010, of 17 May 2011, which was served on Applicant on 24 June 2011.

Subject matter

3. On 13 September 2011 the Applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), alleging that his right guaranteed by Article 46 (Protection of Property) of the Constitutional Court of the Republic of Kosovo (hereinafter: Constitution) has been violated.

Legal basis

4. Article 113.7 of the Constitution and Rule 56 (2) of the Rules of Procedures.

Proceedings before the Court

5. The applicant through her legal representative, Sabri Kryeziu, submitted the Referral to the Constitutional Court on 13 September 2011.
6. On 17 February, the President by Decision GJR.121/11, appointed judge Altay Suroy as Judge Rapporteur. On the same date, President by Decision K.SH. 131/11, appointed the Review Panel composed of Judges Almiro Rodriguez (presiding), Enver Hasani and Gjyljeta Mushkolaj.
7. On 30 January 2012, the Constitutional Court informed the Supreme Court that the Applicant filed a request for Constitutional Review of the Judgment Rev. no. 134/2010, of 17 May 2011.
8. On 20 June 2012, the Constitutional Court requested the completed documentation from the Kosovo Property Agency, as successor of a part of the responsibilities of Housing and Property Directorate - HABITAT, as this institution has previously addressed the issue raised in the Court.
9. On June 25, the Kosovo Property Agency has returned the response to the request of the Court by attaching the decisions taken by the Housing and Property Directorate - HABITAT.
10. On 2 July 2012, the President, by Decision GJR. 121/11 reappointed the new Review Panel composed of judges: Almiro Rodrigues(presiding), Enver Hasani (judge) and Ivan Čukalović, is appointed to replace Judge Iliriana Islami because her term of office on the Court had expired on 26 June 2012.
11. On 18 October 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 the facts

12. Contested property, the basement apartment with 73.58 m² area, was given in use to X. J. , at that time an employee of the United Labor Organization "Television of Prishtina", through the contract no. 01-2218, dated April 10 1979.

13. Then on 8 October 1979, through the contract no.1193/9287, X. J. signed a contract with the BVI for Housing and Business area in Prishtina, for the permanent use of the apartment, along with his wife who was also an employee of "Television of Prishtina", and with the rest of family.
14. In 1994, after the expulsion from work, X. J. and his wife were expelled even from the apartment.
15. On 15 February 1994, the Secretariat for Urbanism and Housing issues of the Kosovo Assembly, by the Resolution no. 360-389, gives the mentioned apartment in permanent use to N.V.
16. On 14 may 1997, N.V., who at that time worked in Municipal Court signed a contract no. 287/1 with the Public Housing Enterprise in Prishtina on leasing of the aforementioned apartment.
17. On 26 March 1999, N.V. signed the purchase contract Vr. No. 107/99, for the aforementioned apartment, and since that time appears as the owner of the apartment.
18. On 28 April 2005, father of the Applicant' father F. S. (now deceased) has signed a purchase contract with N.V. by paying 50.000€ (fifty thousand Euros). This contract is confirmed I the Municipal Court in Prishtina under Vr. No. 4424/2005.
19. Meanwhile, at the Housing and Property Directorate- HABITAT, were submitted three requests for review concerning the contested apartment: the one from X. J. under no. DS008127, from N. V. no. DS 00419 and from D. P. with no. DS 603193.
20. In the response received by the Kosovo Property Agency among other things is stated:

"In respect to the above mentioned property, the Directorate has received three claims, as follows:

On January 1, 2000, has received the request of Category "C" DS000419, submitted by Mrs. N.V. , and the responsible party in this case has been Mr. F.S. (another person with same initials F.S., who is not the Applicant's father), who did not express legal interest on the property but he only need it for inhabitation.

On September 19, 2002, the Directorate has received the claim of Category "C" DS603193, submitted by Mrs. D. P. and the responsible party in this case was Mr. R.H. , who represented and sought legal right to property on behalf of Mr. X.J.

On May 13, 2003, the Department has received the claim of category "A" DS008127, submitted by Mr. X.J., represented by Mr. R. H. .

Initially, the Commission has reviewed the files of claim "C" DS000419, submitted by Mrs. N.V. and HPCC/D/62/2002/C decision, dated December 13, 2002, and decided that the claim DS000419, to be rejected. With the decision of the Commission have been notified both parties in the procedure and within the prescribed period the Legal Department has received a request for review of the decision of the Commission, submitted by Mrs. N. V. Commission after the examination of the request for review, of the decision HPCC/REC/41/2004, dated December 9, decided that the request for review to be rejected. Also, with this decision were notified both

parties in the proceeding. Then, Mrs. N. V. has submitted a request for closure of request DS000419, claiming that she has sold the property in question.

Then, the Commission reviewed the documents of the claims DS603193 and DS008127, and with the decision HPCC/D/181/2005/A & C, dated 30 April 2005, decided that the claim of category "A" DS008127, submitted by Mr. X. J. , to be approved and the right to possession of the property to be returned, and claim of category "C" DS6031 93, submitted by Mrs. D. P. , to be rejected. By decision of the Commission have been notified both parties in the procedure and within the statutory time limit Mr. F. S. (interested party) requested the review of the decision of the Commission, under Section 14.1 of UNMIK Regulation 2000/60, which stipulates that within one year from the date of issuance of the Commission's decision, the interested party is entitled to submit a request for review of this decision. Mr. F. S. , along with the request for review, filed the purchase contract for the aforementioned property, signed between the claimant of claim of category "C" DS000419, Mrs. N.V. , as seller and z. F. S. , as buyer, (contract Vr. No. 4424/2005 dated 22.06.2005, certified in Municipal Court in Prishtinë).

The Commission, after reviewing the request for review, with the decision HPCC/REC/76/2006, dated 16 October 2006, decided that the request for review submitted by Mr. F. S. , to be rejected and in power to remain the decision of the first instance HPCC/D/181/2005/A & C, dated 30 April 2005. For this decision were notified all parties in the proceeding.

21. After the final decision of the Commission, Mr. X. J. requested repossession of property, and officials of the Housing Property Directorate- HABITAT, on 7 May 2007, have released the property from people and households, while on 8 May 2007, the apartment keys were handed over to Mr. X. J. and thereafter the Housing Property Directorate- HABITAT had closed all the three claims: DS000419, DS008127 and DS6031 thus ending its jurisdiction over this matter.

Proceedings before the regular courts

22. The father of the Applicant, F. S. (now deceased) on 29 October 2007 submitted a lawsuit to the Municipal Court in Prishtina, demanding the release and forfeiture of the apartment possessed by X. J.
23. On 28 May 2008, the Municipal Court in Prishtina issued Judgment C. no. 1185/2007, by which rejected the claim as ungrounded stating inter alia that:

“The Court cannot legally change this decision of HABITAT, which is final and as such obligatory in compliance with the Article 2.7of UNMIK Regulation. In these cases there cannot be dualism, therefore this Decision cannot be subject to review by any other body, be that judicial or administrative body in Kosovo”.

Noting further that:

“In this case, the Court as well as the HABITAT upholds the principle of “the first one in time- has the priority to win (on his right)”, because the respondent had owned continuously this apartment since 1979, and now it actually possesses it as the holder of the right of residence”.

24. After he received the Judgment of the Municipal Court in Prishtina, the father of the Applicant exercised an appeal before the District Court in Prishtina within the legal deadline.
25. The District Court in Prishtina on 4 March 2010, issued Judgment Ac. No. 1412/2009 by which found that the plaintiff's appeal was grounded and as such had been approved, and found that the Prishtina Municipal Court incorrectly applied the substantive law, and as such reversed it on the grounds that the Applicant has acquired the right to ownership for the apartment upon the purchase contract, based on the provisions of Article 20.1 of the Law on Basic Property-Legal Relations.
26. After having received the request for revision by the dissatisfied party, the Supreme Court of Kosovo by Judgment Rev. no, 143/2010 of 17 May 2012, acknowledged the request for revision as grounded and noted that:

“According to the findings of the Supreme Court, the legal position of the first instance is fair and based on law, because the decision of workers Council of OBPB “Television of Prishtina” approved on 02.20.1973, on the basis of which the respondent has made a contract to use it with the relevant BVI, it was never annulled by any eventual act or possible procedure, and as such it remains in full legal effect. Even HABITAT has recognized the respondent’s right to use the subjected apartment, at his request”.

Noting further that:

“In the concrete case the plaintiff has not proven did not prove by evidence the right on ownership, whose submission he requested, so the judgment of the second instance court was changed due to erroneous application of substantive law, so it remained effective the judgment of the first instance which correctly applied the substantive law when it found the plaintiff's claim is ungrounded”.

Preliminary assessment of the admissibility of the referral

27. Although the Applicant has exhausted all legal remedies in order to exercise his alleged right to protection of property, as provided in Article 113.7 of the Constitution, she has not presented any evidence or relevant fact to support that “Administrative or judicial authorities have made any violation of her rights guaranteed by the Constitution” (see Vanek against the Slovak Republic, the ECHR’s Decision on admissibility in case no. 53363 of 31 May 2005).
28. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or court of fourth instance, in respect of the decisions taken by ordinary 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, Garcia Ruiz v. Spain (GC) no. 30544/96, para. 28 ECHR 1999-I).
29. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general viewed, in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, Report of the European Commission on Human Rights in the case Edwards v. United Kingdom App. No 13071/87 adopted on 10 July 1991).
30. However, having reviewing the documents submitted by the Applicant, the Constitutional Court does not find that the relevant proceedings were in any way

unfair or tainted by arbitrariness (see *mutatis mutandis*, referral no. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47.2 of the Law, and Rule 56 (2) of the Rules of Procedure, on 18 October 2012, unanimously

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;
- III. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy

President of the Constitutional Court

Prof. Dr. Enver Hasani