



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

Prishtina, 6 January 2014
Ref.no.:RK533/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI152/13

Applicant

Municipality of Gjakova

**Constitutional review of the Judgment of the Supreme Court of the
Republic of Kosovo, Rev. No. 49/2012, of 3 June 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 Applicant is the Municipality of Gjakova, represented by Municipal Public Attorney's Office in Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo in Prishtina, Rev. 49/2012, of 3 June 2013, which the Applicant received on 28 July 2013.

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged decision, by which the Applicant alleges that considerable monetary damage was caused to it, as a result of the violation of the substantive law and violation of the provisions of contested procedure by the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Legal basis

4. Article 113.7 in conjunction with Article 21 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56.2 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 25 September 2013, the Applicant filed the Referral with the Court.
6. On 30 September 2013, the President appointed Judge Ivan Čukalović as the Judge Rapporteur in this case and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).
7. On 9 October 2013, the Court notified the Applicant and Supreme Court of Kosovo on registration of this Referral.
8. On 20 November 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

9. Based on the statement of facts presented, this Referral concerns a civil dispute between the Applicant as the respondent and the plaintiff K.N.
10. In 1966, The Fund for development of land, roads and municipal activities in Gjakova had announced a public auction on joint investments, regarding construction of the business premises in Gjakova, respectively construction of the green market. The plaintiff, according to the achieved agreement with the Fund, and based on the receipt No.03/96 of 3 September 1996, paid an amount of 246.398,00 dinars as advance payment for business premise no. 3, in location "Hani i Kaqit". The plaintiff has fulfilled all the obligations that derive

from the achieved agreement. However, he was not given the business premises nor the amount of money he had paid.

11. Later on, the fund in question, in a non-judicial proceedings, allocated plaintiff in use a land bank in area of 0.03,75 ha, however, it was finally found that in 1995 this land bank was allocated to D. J. who has paid a sum of 9.375,00 dinars, thus the Fund withdrew from this agreement.
12. The plaintiff, requesting reimbursement of the paid amount according to the agreement achieved with the above-mentioned, filed a lawsuit to the Municipal Court in Gjakova.
13. On 16 April 2010, the Municipal Court in Gjakova, by Judgment C. No. 531/2005, rejected in its entirety the plaintiff's lawsuit filed against the Applicant (the respondent). The plaintiff requested through a lawsuit that the Applicant be obliged to compensate to the plaintiff the monetary amount of 76.415,90 € in the name of unjust acquisition.
14. The plaintiff filed an appeal against the Judgment of the Municipal Court in Gjakova to the District Court in Peja.
15. The District Court in Peja, on 24 February 2011, Judgment Ac. No. 375/2010, modified the Judgment that was challenged by the plaintiff and concluded that in that case the Applicant had passive legitimacy therefore it was obliged to pay to the plaintiff, in the name of unjust acquisition, the monetary amount of 76.415,90 €, with interest, which will be paid by commercial banks in Kosovo.
16. The Applicant filed a revision to the Supreme Court against the decision of the second instance court. It requested from the Supreme Court to review the decision of the District Court in Peja due to violation of the substantive law and violation of the provisions of the Law on Contested Procedure.
17. On 3 June 2013, the Supreme Court, Judgment Rev. 49/2012, rejected as unfounded the Applicant's request for revision. The Supreme Court, in this case, concluded that: *"The allegations in the revision that the respondent cannot be responsible for the obligations that were created by the municipal bodies of the previous regime, that there is no succession with the previous municipality, are unfounded, as the second instance court, pursuant to UNMIK Regulation no. 2000/45, of 11 August 2000, has found that the respondent has passive legitimacy of the sued party in this legal matter, because Article 2.4 provides that every municipality shall have its own legal status, the right to own and manage property."*

Applicant's allegations

18. The Applicant alleges that the Judgment of the Supreme Court, Rev. No. 49/2010, of 3 June 2013, contains evident shortcomings in terms of the assessment of the substantive law and legal provisions of the Law on Contested Procedure. He claims that the reasoning of the Judgment of that court is utterly confusing and stereotyped due to the fact that the court did not sufficiently examine the facts and the material evidence.

19. Furthermore, the Applicant alleges that: 1. *“The Revision filed against the Judgment of the District Court in Peja, Ac. nr. 375/10 was in essence focused in the well known fact that the Municipality of Gjakova, in this legal-civil relation, LACKED FULL PASSIVE LEGITIMACY, with grounded justification that the contractual relationship regarding the sale-purchase of the immovable property was concluded between the former “Fund” of Gjakova, later on the successor of the “Fund” Housing Enterprise “Housing Company”, registered with MTI and the plaintiff Kolë Ndrecaj. 2. In this contractual relationship, the Municipality of Gjakova was on no occasion and at no point in time involved. 3. From the challenged Judgment it results that the subject of the dispute are business premises, whereas from the claim it results that the subject of the dispute is the immovable property – unbuilt building plot, no. 4446/165, no. of plot 378 KK, Gjakova, in the town, with surface area of 375 m2.*

Admissibility of the Referral

20. In order to be able to adjudicate the Applicant’s Referral, the Court must first examine whether the Applicant has met all admissibility requirements laid down in the Constitution, and further specified in the Law and in the Rules of Procedure.
21. In this case, the Court refers to Article 113.7 which provides: Article 21 paragraph 4 of the Constitution which provide:

113.7 “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”.

Article 21.4 of the Constitution which stipulates:

21.4 “Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”

22. For the purposes of the admissibility, the Court must also take into account whether the Applicant’s Referral meets the admissibility criteria set forth under Rule 36.1 (c) of the Rules, which provides that:

(1) “The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded”.

23. Furthermore, Rule 36.2 of the Rules of Procedure provides that:

(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, or

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) when the Applicant does not sufficiently substantiate his claim”.

24. In the present case, the Court notes that the Applicant’s Referral, concerning the constitutional review of the challenged decision, consists on: a) violation of substantive law and b) violation of the legal provisions of the Law on Contested Procedure. Applicant’s allegations in this case have not been made on the basis of the constitutional complaint (constitutionality) on violation of any right.
25. In this context, the Court considers that the Applicant’s allegations are mainly of legality nature and as such they do not raise constitutional issues with respect to the violation of any fundamental right guaranteed by the Constitution in order for the Court to be able to intervene.
26. The Court should remind the Applicants that the Constitutional Court is not a fourth instance court to review the legality and the accuracy of the decisions taken by the regular courts, unless there is convincing evidence that such decisions have been issued in an evidently unfair and unclear manner.
27. It still remains the duty of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz versus Spain [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
28. For the foregoing reasons, the Court concludes that the Applicant’s Referral does not meet the admissibility requirements because the Applicant has failed to prove that the challenged decision has violated any of its constitutionally guaranteed rights.
29. In sum, the Court concludes that the Applicant’s Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, pursuant to Rule 36.2 (b) and 56.2 of the Rules of Procedure, in its session held on 20 November 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani