



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

Prishtina, on 28 May 2015
Ref. No.:RK 799/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI176/14

Applicant

Sekule Stanković

**Request for Constitutional Review of Judgment Rev. no. 233/2014, of the
Supreme Court, of 3 September 2014**

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
Arta Rama-Hajrizi, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Sekule Stanković, from Prishtina, with residence in Medvegje, Republic of Serbia, who is represented before the Court by Mr. Visar Ahmeti and Mr. Ekrem Agushi, lawyers.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 233/2014 of the Supreme Court of the Republic of Kosovo, of 3 September 2014 (hereinafter: the Supreme Court). By this Judgment the revision of Mrs. V. B. (the respondent) was approved and the statement of claim of the Applicant (the claimant) for annulment of the contract on exchange of immovable properties was rejected.
3. The challenged Judgment was served on the Applicant on 8 December 2014.

Subject Matter

4. The subject matter of the Referral is the constitutional review of challenged Judgment Rev. no. 233/2014, due to alleged violation of the rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

5. The legal basis for processing this Referral is Article 113.7 of the Constitution, Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 10 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 January 2015, the President of the Court, by Decision no. GJR. KI176/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI176/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu (member) and Arta Rama-Hajrizi (member).
8. On 20 January 2015, the Court informed the Applicant about the registration of the Referral and submitted a copy of this Referral to the Supreme Court.
9. On 15 April 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

Summary of Facts

10. On 1 August 1999, the Applicant concluded a contract with Mrs. V. B. (the respondent) for the exchange of immovable properties, an apartment which is located in Dardania SUII/1, with a house of 124 m² (square meters) and a yard of 12 are and 17 m², described as plot no. 1946, located in Medvedje.
11. On 11 October 2011, the Municipal Court in Prishtina, Branch in Gračanica (Judgment, C. no. 863/11) approved the Applicant's statement of claim as grounded and confirmed that the contract on exchange of immovable

properties, concluded on 1 August 1999, between the Applicant and the respondent was null and void and without legal effect.

12. Against this Judgment, the respondent filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), by challenging all items of the Judgment.
13. On 18 September 2013, the Court of Appeal (Judgment, Ac. No. 58/2013) rejected the respondent's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina, Branch in Gracanica.
14. On 12 December 2013, the respondent submitted a revision to the Supreme Court against the Judgment of the Court of Appeal, challenging the Judgment as unfair.
15. On 3 September 2014, the Supreme Court (Judgment, Rev. no. 233/2014), approved the revision filed by the respondent as grounded, modified the judgments of the lower instance courts, by rejecting the Applicant's statement of claim as out of time.
16. In addition, the Supreme Court, in its Judgment, reasoned as it follows: *"In the present case, based on the fact that the contract on exchange of immovable property between the litigants has not been formalized in the legal aspect, we are not before such a contract, and if we do not have contract, it cannot be annulled as it erroneously acted the first instance court, but even the legal contract certified in the court existed, the time limit for its nullity had expired, since the internal contract was concluded on 1.8.1999, while the claim in the court was filed on 10.11.2004, whereas according to the legal provision under Article 117 of LOR, the annulment of the contract can be requested within time limit of 1 year from the day, after becoming aware of the ground of annulment, for making the contract rescindable, namely the termination of coercion, whereas in the present case have passed 5 years, 3 months and 9 days, therefore the allegation mentioned in the revision that the claim is out of time, the Supreme Court of Kosovo approved as grounded"*.

Applicant's Allegations

17. The Applicant claims that the Supreme Court, by approving the revision filed by the respondent as grounded and by rejecting his statement claim for annulment of the contract on exchange of immovable properties as ungrounded, has violated his property right, guaranteed by Article 46 of the Constitution.
18. The Applicant bases his allegation of violation of Article 46 of the Constitution on the fact that: *"The Supreme Court in its reasoning among the other presented reasons, which are in full contradiction with the material evidence, because the claimant's claim in the present case was filed within legal time limit, provided by the provisions of Article 117 of Law on Obligational Relationship (LOR)."*

Admissibility of the Referral

19. The Constitutional Court, before considering the Referral, first examines whether the Applicant's Referral meets the procedural admissibility requirements, laid down in the Constitution, and further specified in the Law and the Rules of Procedure.
20. Regarding this Referral, the Court refers to Article 48 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*".
21. In addition, Rule 36 (1) (d) of the Rules of Procedure provides:
 - (1) *The Court may consider a referral if:*
[...]
(d) *the referral is prima facie justified or not manifestly ill-founded.*
22. Furthermore, Rule 36 (2) of the Rules of Procedure reads:
 - (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
[...]
(b) *the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*
[...]
23. In the present case, the subject matter before the regular courts was the Applicant's request regarding the annulment of the contract on exchange of immovable properties. The first and second instance courts approved the Applicant's statement of claim and decided to annul the contract. However, the Supreme Court, based on the revision filed by the respondent, modified the judgments of the abovementioned courts, by rejecting as ungrounded the Applicant's statement of claim because it was filed after the deadline provided by the law.
24. The Applicant claims that the Supreme Court, by rejecting the claim for annulment of the contract on exchange of immovable properties as out of time, violated his property right, guaranteed by Article 46 of the Constitution.
25. As to the property right, Article 46 [Protection of Property] of the Constitution provides:
 1. *The right to own property is guaranteed.*
 2. *Use of property is regulated by law in accordance with the public interest.*
 3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to*

the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
26. With regard to the Applicant's claim of violation of the property right, the Court, based on the case file, considers that such an allegation does not present a substantiated constitutional ground, because it is related to the issues of legality, which fall under the jurisdiction of the regular courts.
27. The Court notes that the Supreme Court, *ex officio*, assessed the legality of the lower instance court decisions, and concluded that the substantive law was erroneously applied, because, the deadline for filing the statement of claim, which had as subject matter the request for annulment of the contract on exchange of real estate, had expired.
28. In this regard, the Court reiterates that it is not its duty to go into the issues of legality, such as the verification of the fact in the present case whether the Applicant's statement of claim was filed within the time limit prescribed by law.
29. The Court reiterates that the interpretation of provisions of the substantive and procedural law is the task of the regular courts and falls under their jurisdiction.
30. The Constitutional Court can only consider whether the evidence before the courts and other authorities has been presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia*, Report of the European Commission on Human Rights, case *Edwards v. United Kingdom*, Application No. 13071/87, adopted on 10 July 1991).
31. The Court considers that the Supreme Court in its judgment justified why the judgments of the lower instance courts had to be modified and the Applicant's statement of claim be rejected.
32. Therefore, the Constitutional Court does not find that the pertinent proceedings before the Supreme Court have been in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application No. 17064/06 of 30 June 2009).
33. From all the reasons above, the Court concludes that the Applicant's Referral is to be declared as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d), Rule 36 (2) (b), and Rule 56 (2) of the Rules of Procedure, on 28 May 2015, 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 is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani