



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

Pristine, 10 May 2012
Ref. No. RK231/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 87/11

Applicant

Ukshin Aliti

**Request for review of the Supreme Court of Kosovo Judgement
Rev.Nr.247/2007 dated 12 January 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. Ukshin Aliti, resident of Gjilan (the “Applicant”). He is represented by attorney practising lawyer Gani Tigani.

Subject matter

2. The Applicant filed a claim in the Municipal Court in Gjilan for the determination of property rights over parcels Nr.1727 and 1728 registered in the Cadastral Municipality of Gjilan (hereafter the "Property"). The Applicant claims that he inherited the Property from his late father, Mr. Riza Aliti. On 10 January 2007, the Municipal Court approved the summary claim and confirmed the Applicant's ownership of the Property. The respondents in that matter filed an appeal in the District Court of Gjilan. On 22 June 2007, the District Court affirmed the decision of the Municipal Court and rejected the appeal. On 12 January 2011, the Supreme Court of Kosovo overturned the respective decisions of the Municipal and District Courts and rejected the summary claim of the Applicant.
3. The Applicant requests the Constitutional Court to review the constitutional validity of the decision of the Supreme Court and issue a temporary measure to ensure that the judgment of the Supreme Court does not take legal effect should it be found to have decided in breach of the Constitution.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereafter the "Constitution"); Articles 27, 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law on the Constitutional Court"), and Rule 56 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 Court

5. On 29 June 2011, the Applicant submitted to the Court a Referral.
6. On 17 August 2011, the President appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (Presiding), and Enver Hasani and Iliriana Islami.
7. On 19 March 2012, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. The Applicant's late father is said to have purchased the Property in 1964 and executed a verbal contract for sale. Therefore, the Applicant asserts that possession commenced from 1964 by his father without interruption, and thereafter by his successors, including the Applicant until 1996 - 1997.
9. The Municipal Court in Gjilan, by judgment C.Nr.26/2004 dated 10 January 2007, approved the Applicant's petition and confirmed that the Applicant and other members of his family were the owners of the Property.
10. The District Court in Gjilan, by judgment Ac.Nr.165/2007 dated 22 June 2007, confirmed the judgment of the Municipal Court and refused the appeal by the respondents.

11. However, the Supreme Court of Kosovo, by judgment Rev.Nr.247/2007 dated 12 January 2011, overturned the judgements of the lower courts and rejected the Applicant's claim over the Property.
12. According to the Applicant the Supreme Court judgment of 12 January 2011 have been served on the Applicant on 13 April 2011.
13. The Supreme Court considered the factual situation of the case and found that the lower courts wrongfully applied the law by deciding in favour of the Applicant's summary claim. The Supreme Court considered the following facts:
 - a. Based on the geodesy expert report dated 2 August 2000, the Property was registered under the name of KB "Mlladost" in 1954-1955. At present, the Property is registered under the name KM "Agrokultura".
 - b. KB "Mlladost" and a third party "A" (names withheld) executed a contract of exchange of immovable property nr.804 dated 28 July 1997 which was certified by the Municipal Court of Gjilan (Vr.nr.1427/97 dated 28 July 1997).
 - c. Third party "A" and third party "B" (names withheld) executed a contract of sale of the Property on 20 September 1997 which was certified by the Municipal Court of Gjilan (Vr.nr.1315/2000 dated 11 December 2000).
 - d. Therefore, the Applicant lost possession over the Property in 1996 – 1997 when a third party acquired the ownership rights over the Property.
 - e. The Property was developed by the third party owner and numerous houses were built and some were subsequently sold.
 - f. The verbal contract of sale which the Applicant considers to be the basis of the ownership right is invalid as it does not satisfy the form required by the applicable law on real estate. The applicable law requires contracts of this nature to be in writing and the signatures of the parties certified before a court. Neither requirement for a valid contract was met.
 - g. The Supreme Court disagreed with the decision of the lower courts that the Applicant acquired the ownership rights through prescriptive acquisition.
 - h. The Applicant became a tenant of the Property in bona fide from the moment of inheritance which is said to have taken place on 20 February 1994, the date of the death of Riza Aliti. The Supreme Court stated as follows: "The claimants as inheritors became tenants in bona fide of the immovable property from the moment of the opening of inheritance. From the death certificate is indicated that the claimants predecessor Riza Aliti, passed away on 20.02.1994, whereas the claimants lost the possession on disputed property in 1996-1997, therefore in the present case the legal requirements foreseen by paragraph 4, article 28 of the Law on Basic Property relations, for the claimant to acquire the ownership right over the disputed property through prescription, are not meet"
14. In consideration of the factual situation summarised above, the Supreme Court deemed there were reasons to amend the judgments of the lower courts.

Alleged violations of the constitutionally guaranteed rights

15. The Applicant alleges that the judgment of the Supreme Court violates his constitutionally guaranteed rights to fair and impartial trial and the right to protection

of property pursuant to Articles 31 and 46 of the Constitution. The Applicant argues that the Supreme Court's approach is in direct conflict with Article 80. 6 (entry into force of law) regarding Article 102.3 (general principles of the judicial system) which determines that "Courts shall adjudicate based on the Constitution and the law). The Applicant argues this since the prescription period was completed while Riza Aliti himself was alive (1964 beginning of prescription period and possession of 20 years ends with year 1984), which is not contested. From this angle for the Applicant it appears quite unacceptable and unconstitutional position of the Supreme Court of Kosovo.

Assessment of interim measure

16. As regards the Applicant's request that the Constitutional Court issue an interim measure to ensure that the judgment of the Supreme Court does not take legal effect, this request does not contain sufficient evidence or reasons, which might justify the granting of an interim measure.
17. In particular, the Applicant has not shown, as required by Article 27 of the Law, that he will suffer irreparable damage, if an interim measure is not granted. Moreover, it has not been established that the imposition of interim measures would be in the public interest.
18. Therefore, the requirements for the imposition of interim measures are not satisfied and the Applicant's' request must be rejected.

Assessment of admissibility

19. 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.
20. In this regard, the Court refers to Articles 53 of the Constitution as follows:
"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."
21. The Court also refers to Article 113(7) of the Constitution as follows:
"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. Finally the Court recalls to its Rules of Procedure, most notable to:
 - a. Rule 36 (1) (c) of the Rules according to which: the Court may only deal with referrals if the referral is not manifestly ill-founded.
 - b. And Rule 36 (2) (b) and (d) according to which: *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*
23. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by

ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para 28 European Court on Human Rights [ECHR] 1999-I).

24. 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).
25. The mere fact that the Applicant is 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 Tizszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005.)
26. With regard to the Applicant's complaint of the alleged violation of protection of property of Article 46 of the Constitution as well Article 1 of Protocol No. 1 to the Convention the Court recalls that this applied only to a person's existing possessions.
27. Thus, the hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, para. 69, ECHR 2002-VII). However, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, para. 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, para. 50).
28. The Court recalls that in the present case there is a dispute as to the correct interpretation and application of applicable law and the Applicant's submissions are subsequently rejected by the Supreme Court.
29. The Court is therefore satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right to protection of property.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 27 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

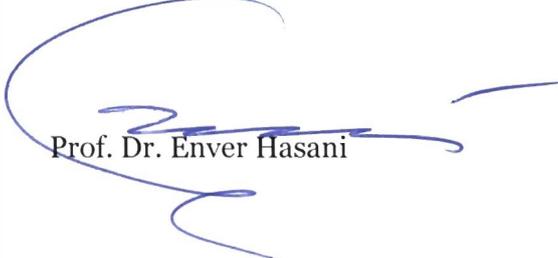
- I. TO REJECT the Request for interim measure;
- II. TO REJECT the Referral as Inadmissible;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Dr. Gjyljeta Mushkolaj

President of the Constitutional Court



Prof. Dr. Enver Hasani