



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

Prishtina: 23 January 2013
Ref. No.: RK365/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI102/12

Applicant

Bilall Osmani

**Constitutional Review of the Judgment of District Court in Mitrovica
Ac.no.15/10 dated 21 February 2011**

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 Mr. Bilall Osmani represented by Mr. Adem Vokshi, lawyer from Mitrovica.

Challenged decision

2. Judgment of District Court in Mitrovica Ac.no.15/10 dated 21 February 2011.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the Law), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter of the Referral is the confirmation of property right of a business premise purchased by the Applicant, based on sale-purchase agreement, legalized in the Municipal Court in Vushtrri.

Proceedings before the Constitutional Court

5. On 19 October 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 November 2012, the President of the Court, by Decision No. GJR.KI-102/12, appointed the judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision No.KSH.KI-102/12, appointed the Review Panel composed of Judges: Ivan Ćukalović (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 5 November 2012, the Applicant was notified about the registration of the Referral. On the same day it was communicated to the District Court in Mitrovica and the Office of the Chief State Prosecutor.
8. On 22 January 2012, the Review Panel considered the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral. The Review Panel was not in full composition, one of the three judges was absent, such a procedure is not standard and this is an exception, but is permissible as the Review Panel has no decision –making authority.

Summary of fact as submitted by the Applicant

9. On 2 June 2003, the Applicant concluded sale-purchase agreement of the business premise no.1 which is located in Vushtrri on Str. "Bedri Pejani" no.30. The premise has an area of 31.5 m² in the cadastral parcel 36/1 at the place called "Qytet" that is registered in the possession list no. 1292 MA Vushtrri (Applicant was earlier in possession of the abovementioned premise as tenant).
10. The abovementioned contract was legalized in the Municipal Court in Vushtrri with number Vr.No.749/2003 dated 9 June 2003. The contract *inter alia* stipulated that the seller was entitled to return the sold premise to her ownership under the condition that in 2010 she would pay to Applicant the amount of 20.000 euro (sale-purchase price was 15.000 euro, while the seller in 2010 had to pay additional 5.000 euro, if he wanted to return the ownership over the premise above).

11. The Applicant was denied the confirmation of property right over the business premise by a third party, who alleged to have purchased the abovementioned premise together with the house where it was located.
12. On 23 December 2005, Municipal Court in Vushtrri by Judgment C.no.742/05 decided to : 1) reject the statement of claim of the Applicant to confirm that he is the owner of the business premise, 2) annulled the sale-purchase contract of the business premise, and 3) ordered Applicant to handover in possession the business premise to the third party.
13. On 10 October 2006, after the appeal of the Applicant, the District Court in Mitrovica by Resolution Ac.no.43/2006 quashed in entirety the above-mentioned Judgment of the Municipal Court in Vushtrri and remanded the case to the latter for retrial.
14. On 7 March 2008, Municipal Court in Vushtrri, by Judgment C.no.495/06 decided to: 1) reject the statement of claim of the Applicant to confirm that he is the owner of the business premise, 2) upheld the termination of contract on sale-purchase 3) obliged the seller to pay to Applicant the compensation as determined by the sale-purchase contract of the business premise, and 4) obliged the Applicant to handover the possession of the business premise to the third party.
15. On 21 February 2011, after the appeal of the Applicant, the District Court in Mitrovica by Judgment Ac.no.15/2010 upheld in entirety the judgment of the Municipal Court in Vushtrri C.no.495/06 dated 7 March 2008, and rejected the appeal of the Applicant as unfounded.
16. On 6 March 2011, the Applicant filed submitted request to the State Prosecutor to initiate the procedure for protection of legality.
17. On 15 April 2011, the State Prosecutor by letter KMLC.nr.25/2011 notified the Applicant that after reading the case, did not find legal basis to initiate the request for protection of legality.

Applicant's allegations

18. The Applicant alleges that the District Court in Mitrovica, by its two diametrically opposite decisions, has gravely violated the principle of legal certainty.
19. The Applicant alleges that he has purchased the business premise, paid sale-purchase price, had taken into possession the purchased premise and legalized the contract in the Municipal Court and poses the question what else could he have done to have legal certainty.
20. The Applicant requests from the Court:
 - a) To declare his referral as admissible;
 - b) To conclude that there was a violation of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1, protocol 1 of ECHR;
 - c) To conclude that there was a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of ECHR.
 - d) To declare the Judgment of District Court in Mitrovica Ac.no.15/10 dated 21 February 2011 invalid;

- e) To return the case for retrial to the District Court in Mitrovica in accordance with the Judgment rendered by the Constitutional Court.

Preliminary assessment of admissibility of the Referral

21. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure
22. Regarding the Applicant's Referral, the Court refers to Article 49 of the Law, which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

23. From the submissions it can be seen that the Referral was submitted on 19 October 2012 and that the decision of the last instance court was served to the Applicant on 24 February 2011, meaning that the Referral was not submitted within the time limit as provided by the Article 49 of the Law.
24. It follows that the Referral is out of time.
25. Therefore, the Referral should be rejected as inadmissible due to non-compliance with the time limit as stipulated by Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution; pursuant to Article 47 of the Law; and in compliance with the Rule 36.1 (b) of the Rules of Procedure, on 22 January 2013, 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani