



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

Prishtina, 7 June 2013
Ref. No.: RK419/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI11/13

Applicant

Izahir Troni

**Constitutional Review of the Decision of the Supreme Court of Kosovo,
Rev.no. 34/12, of 8 October 2012**

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 Izahir Troni from the village of Kovacec, Municipality of Kacanik, represented by Sabri Kryeziu, Lawyer from Lipjan.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev.no. 34/12 of 8 October 2012, which rejected the revision against the Judgment of the District Court in Prishtina, AC. no. 845 /2010 of 27 January 2011, and confirmed the Judgment of the Supreme Court in Prishtina, C.no. 1266/2003, of 04 December 2009.

Subject matter

3. The subject matter has to do with property rights over immovable property in dispute, which was finalized by the Judgment of the Supreme Court of Kosovo Rev.no. 34/12 of 8 October 2012, which, according to allegations of the Applicant, violated a number of Articles of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of 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 2012 (hereinafter, the Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter, the Rules).

Proceedings before the Court

5. On 30 January 2013, the Applicant filed his referral with the Constitutional Court of the Republic of Kosovo (hereinafter, Court).
6. On 14 May 2013, after having considered the report of Judge Snezhana Botusharova, the Review Panel composed of Judges: Altay Suroy (Presiding), Almiro Rodrigues and Enver Hasani, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

7. The Applicant had raised a property rights dispute with third parties before the Municipal Court in Prishtina, in relation to property rights over the immovable property registered as cadastral parcel no. 505/1, no. 505/2 and no. 505/3, in the place called «Village Home Plot», with a surface area of 0.10,70 ha, registered with the possession list no. 22 CZ Fushe-Kosova.
8. On 04. December 2009, the Municipal Court in Prishtina, by Judgment C.no. 1266/2003, found the following factual situation, providing detailed reasoning, on the property case;

- I. **CONFIRMING THAT** the contract on sale of immoveable property signed through representatives, by claimant/counter-respondent Petar Rapajic from Devet Jugovic, as selling party, and Izair Troni, respondent/counter-claimant, as buying party, certified before the Municipal Court in Prishtina, as Ov.no. 712/2001, of 07.01.2001, is hereby **null and void**, and creates no legal effect.
 - II. **APPROVING** the claim suit of claimant/counter-respondent, thereby **certifying** that the claimant/counter-respondent Mifail Shaqiri from Prishtina, has acquired property rights, on the basis of written contract on sale of immoveable properties of 14.11.1997, on cadastral parcels 505/1 and 505/2, "Country-house parcel", total surface area 0.10.70 ha, registered in possession list no. 22 CZ Fushe-Kosova, and ordering respondent Petar Rapajic to acknowledge such rights, while the respondent/counter-claimant Izair Troni is ordered to acknowledge property rights, allow for registration of rights in the cadastre records of the Directorate for Cadastre, Geodesy and Property of the Municipality of Prishtina, and submit the contested property to claimant/counter-respondent Mifail Shaqiri, within a deadline of 15 days from the final form of the judgment.
 - III. **REJECTING** the claim suit of respondent/counter-claimant Izair Troni from Fushe-Kosova, as **ungrounded**, which demanded from the Court to certify that the contract of 28.10.1999, was entered into between Petar Rapajic as selling party, and Nexhmi Begolli from Prishtina, as buying party, on the sale of cadastral parcels 505/1, 505/2 and 505/3 CZ Fushe-Kosova, surface area 0.16.74 ha, for the contracted price of 80.000 DM, as legally effective act.
 - IV. **REJECTING** the claim suit of respondent/counter-claimant Izair Troni as **ungrounded**, by which it was demanded from the Court to certify that the written contract signed on 28.12.2001 in Prishtina, between Nexhmi Begolli from Prishtina, as selling party, and Izair Troni from Kovacevac, Municipality of Kacanik, as buying party, on sale of cadastral parcels 505/1, 505/2 and 505/3, all in Fushe-Kosova, surface area of 0.16.74 ha, for the contracted price of 315.000 DM, and that the contract establishes full legal effect between contracting parties, on the basis of which the respondent/counter-claimant Izair Troni is legal owner of mentioned parcels.
9. On 27 January 2011, the District Court in Prishtina, by Judgment AC. no. 845/2010, rejected in its entirety the complaint of the respondent/counter-claimant Izahir Troni, and confirmed the mentioned Judgment of the first instance court, thereby upholding as proper all factual and legal findings of the first instance court.
 10. The respondent/counter-claimant Izahir Troni filed a revision due to substantial violations of provisions of contested procedure and erroneous application of substantive law, thereby proposing that his revision be confirmed as grounded, and that the Judgments of lower instance courts be amended,

thereby confirming his counter-claim as grounded, or that such judgments are annulled, and the case is reopened for review at the first instance court.

11. The Supreme Court of Kosovo rendered the Judgment Rev.no. 34/12 of 8 October 2012, thereby rejecting the revision as ungrounded, and providing detailed reasoning on each individual finding in the Judgment, and thereby providing the following reasons, amongst others:

“... Other revision allegations that lower instance judgments have violated the right of use of official languages, since from the process report on the main hearing of 04.10.2007, it may be ascertained that the first instance court has instructed the parties on their rights to use their own language in hearings and throughout the procedure, but the parties have stated that they speak the language of procedure, and that translation is not required, and in this sense, the Court finds that the judgments rendered do not contain any essential violations of procedure, as per Article 182.2, item (j) of the LCP...”

Applicant’s allegations

12. The Applicant alleges that the Article 3 (Equality Before Law) of the Constitution was violated in the following manner:

*“By the acts of the Municipal Court in Prishtina, further confirmed by the decision of the District Court in Prishtina, and ultimately by the decision of the Revision Court – the Supreme Court of Kosovo, the Article 3 of the Constitution of the Republic of Kosovo was violated, since the Municipal Court in Prishtina, and the two other court instances have rejected the counter-claim, without any existing reason, thereby negating and infringing upon the main pillars upon which the civil legal relations are built (**respect and conscience**), thereby engaging in a violation of the legal institution of property **possession**, and violating the legal institution of **stronger legal basis** and ultimately, violating **property rights**.”*

13. The Applicant further alleges that the Article 5 (Languages) of the Constitution was violated in the following manner:

“In procedural actions of first and second instance courts, which were not eliminated or assessed by the Revision Court, the Article 5 of the Constitution was also violated. In the main hearing on 04.12.2009, the hearing was held in the presence of the court interpreter, to provide the possibility to parties to use their own languages with a view of free expression, and to avoid any violation of procedural and substantial violation of law, due to lack of knowledge of language.”

“In this sense, the Court applied a legal provision, and consequently a constitutional provision. Nevertheless, in compiling the judgment, it failed to act in the same manner, because it compiled the Judgment only in Serbian, and not in Albanian, thereby creating difficulties in fully

understanding the contents of the Judgment. Due to this circumstance, the respondent Izahir Troni, in the main hearing held on 04.12.2009 requested that the proceedings be held with the assistance of an interpreter, as already decided by the Court. Nevertheless, the same procedure was not applied when compiling the judgment, and as a result of such omission, and such a violation was also mentioned in the complaint, where the District Court in Prishtina served its judgment to the parties only in Serbian language. "This violation is also mentioned in the revision, in which case the Supreme Court, instead of confirming such a violation of use of language, and correspondence in the native language of the parties, the Court, in its reasoning, in page 4, paragraph 4 of its Decision, reasons that the Court asked the parties in relation to the use of native language, and that the parties had stated that they do not need an interpreter. These are actions which are not analysed, and they are not supported by proof, therefore by such actions, the courts violated the provisions of Article 5 and provisions of Article 24 of the Constitution of the Republic of Kosovo."

14. According to allegations of the Applicant, there were violations of provisions of Article 31 (Right to Fair and Impartial Trial), and Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, and violation of Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

"... due to the fact that the respondent/counter-claimant Izahir Troni was not served the judgment in his own native language, by not filing a revision with the State Prosecutor to undertake its action in relation to request for protection of legality, the decision of the Supreme Court without proof-arguments that the revision was submitted to the State Prosecutor, makes this trial unfair, and the decision a violation of principles of equality of parties in proceeding."

15. The Applicant addresses the Constitutional Court with the following demands:

*"Based on procedural, material and constitutional violations undertaken to the detriment of the respondent/counter-claimant Izahir Troni, we demand from the Constitutional Court to **annul** the judgment of the Supreme Court of the Republic of Kosovo Rev.no. 34/2012 of 08.10.2012, the Judgment of the District Court in Prishtina Ac. no. 845/2010 of 27.10.2011, and the Judgment of the Municipal Court in Prishtina C. no. 1266/03 of 04.12.2009, and to **reopen the matter for trial before the Municipal Court in Prishtina.**"*

Preliminary assessment of admissibility of the Referral

16. The Applicant claims that the grounds for his Referral are Article 3 (Equality Before Law), Article 5 (Languages), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

17. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo 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.“

18. According to the Constitution, the Constitutional Court is not a court of appeal, when reviewing rulings rendered by regular courts. It is the role of regular courts to interpret and apply the procedural and substantial law (see *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28., European Court for Human Rights [ECHR] 1999-I).
19. The Applicant has not filed any *prima facie* evidence which would prove the violation of his constitutional rights (see, Vanek v. Slovak Republic, ECHR Resolution on Admissibility of Application, no. 53363/99, of 31 May 2005). The Applicant does not clarify in which way the Articles 3, 5, 31 and 54 of the Constitution, and Article 6 of the ECHR corroborate his referral, as provided by Article 113.7 of the Constitution, and Article 48 of the Law.
20. The Applicant alleges that his rights were violated by an erroneous ascertainment of facts and erroneous application of law by regular courts, thereby claiming that the court violated Article 5 (Languages) of the Constitution by *“not serving the judgment in his native language”*.
21. From the case files, it may be clearly ascertained that the Supreme Court of Kosovo, by Judgment Rev.No. 34/12 of 8 October 2012, rejected the revision as ungrounded, thereby reasoning that the Court *“finds that the first instance court had instructed the parties to their rights to use their own official languages throughout the trial and the whole procedure, but the parties stated that they speak the language in which the procedure is held, and therefore, they do not need interpretation”*, which is now a circumstance proposed by the Applicant as grounds for filing a Referral before the Constitutional Court .
22. In this case, the Applicant was given numerous possibilities of presenting his case and challenge the interpretation of the law, for which he claims to be erroneous, before the Municipal Court in Prishtina, District Court in Prishtina, and the Supreme Court. Following a review of proceedings in entirety, the Constitutional Court could not find that the respective proceedings were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, ECHR Resolution on Admissibility of Application, no. 17064/06 of 30 June 2009).
23. Finally, the admissibility requirements were not fulfilled by the referral. The Applicant has failed to raise and prove by evidence that the challenged rulings have violated constitutional rights and freedoms.
24. It follows that the Referral is manifestly ill-founded, in compliance with Rule 36 (2b) of the Rules of Procedure, which provides that *„The Court shall reject a Referral as being manifestly ill-founded b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights,“*.

FOR THESE REASONS

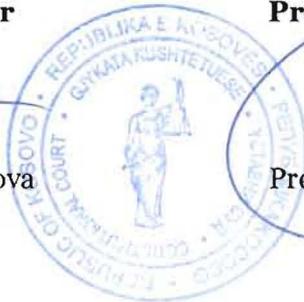
The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2b) of the Rules of Procedure, in the session of 7 June 2013, unanimously

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

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani

