



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristina, on 28 October 2013  
Ref. no.:RK486/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI50/13**

Applicants

**Aziz Mazreku, Zekë Mazreku and Hajriz Mazreku**

**Constitutional Review of the Judgment Rev.no.164/2009 of the Supreme  
Court of Kosovo, of 11 December 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

#### **Applicants**

1. The Applicants are Aziz Mazreku, Zekë Mazreku and Hajriz Mazreku, represented by Mr. Xhevdet Krasniqi, lawyer from Prishtina.

## **Challenged decisions**

2. The Judgment of the Supreme Court of Kosovo Rev.no.164/2009 of 11 December 2012, the Judgment C.no.223/2006 of 19 March 2008 of the Municipal Court in Malisheva and the Judgment C.no.88/2002 of 22 March 2004 of the Municipal Court in Malisheva.

## **Legal basis**

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 20 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 property dispute between the Applicants and the third parties. In 1947, People's Municipal Council in Dragobil gave in use the disputed real estate to the predecessor of the third party, while the latter in the same year, based on verbal contract, sold the disputed real estate to the Applicants' predecessor.
5. In 1957, People's Council of District of Prizren–Municipality of Banja by ruling took the contested real estate from the predecessor of the third party, because, the contested real estate was given for use to the latter in 1947 and not as a property title. As a consequence, due to disagreements on the property title over the contested real estate, the matter was solved by regular courts.

## **Proceedings before the Court**

6. On 4 April 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 16 April 2013, the President, with Decision No.GJR. KI-50/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, with Decision No.KSH. KI-50/13, appointed the Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Artë Rama-Hajrizi (members).
8. On 24 May 2013, the Applicants were notified about the registration of Referral. On the same day, the Referral was communicated to the Supreme Court of Kosovo.
9. On 26 June 2013, the Court requested from the Basic Court in Gjakova- Branch in Malisheva, to submit additional documents.
10. On 12 September 2013, the Review Panel the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.



## Summary of facts

11. On 2 February 1998, the Municipal Court in Rahovec by Judgment C.no.652/1997 recognized the Applicants' right as co-owners of 1/3 of ideal parts of the disputed real estate.
12. On 1 March 2002, the Municipal Court in Malisheva by Judgment C.no.1/2000 approved the statement of claim of the Applicants that, based on the verbal agreement concluded in the years 1947-'48, they are the co-owners of the disputed real estate and forced the respondents NB "Mirusha" and B.M from Malisheva to recognize and accept this Applicants' right.
13. On 13 November 2002, the District Court in Prizren by Ruling Ac.no.119/2002 approved the appeal of NB "Mirusha" in Malisheva, while the Judgment C.no.1/2000 of 1 March 2002 of the Municipal Court in Malisheva was quashed and the matter returned for retrial.
14. On 22 March 2004, the Municipal Court in Malisheva, by Judgment C.no.88/2002 rejected the Applicants' statement of claim and confirmed that the allegations in the Applicants' statement of claim as co-owners of the contested real estate are ungrounded.
15. On 19 March 2008, the Municipal Court in Malisheva by Judgment C.no.223/2006 rejected the Applicants' statement of claim to confirm that they are the owners of the 1/3 part of the contested real estate.
16. On 18 December 2008, the District Court in Prizren by Judgment Ac.no.217/2008 approved the Applicants' statement of claim and confirmed that they are the owners of the 1/3 part of the contested real estate.
17. On 26 February 2009, the Municipal Court in Malisheva by Ruling E.no.74/2009 stayed-suspended the executive procedure proposed by the Applicants.
18. On 11 December 2009, the Municipal Court in Malisheva by Ruling E.no.74/2009 decided to permit the execution of the Judgment Ac.no.217/2008 of 18 December 2008 of the District Court in Prizren.
19. On 11 December 2012, the Supreme Court of Kosovo, by Judgment Rev.no.164/2009: i) approved the revision of the Municipality of Prizren, ii) altered the Judgment Ac.no.217/2008 of 18 December 2008 of the District Court in Prizren, and iii) confirmed the Judgment C.no. 223/2006 of 19 March 2008 of the Municipal Court in Malisheva, by which the Applicants' statement of claim that they are the owners of the 1/3 part of the contested real estate was rejected.
20. The Supreme Court of Kosovo by Judgment Rev.no.164/2009 of 11 December 2012 reasoned:



*"... From the case files, it follows that the first instance court while assessing the necessary evidence found that the property in dispute, in 1947, was allocated by the Municipality of Banja to the use of predecessor of respondent B.M. – S.M. The predecessor of respondent S.M. later sold this property to the predecessor of claimants (the Applicants) R.M., by a verbal contract on sale of property, which was fully met by contractual parties. In 1957, the People's Council of the District of Prizren– Municipality of Banja, pursuant to final decision no. 3049/57, of 16.09.1957, took the property from the predecessor of the respondent M.B. from Malisheva - S.M., allocated to him in 1947 by the Agricultural Commission of the People's Council in Dragobil, such as: the field in the place called "Fusha", surface area of 0.22.00 ha, bounded to the east with the property of B.T., at the length of 46 m, to the north with the property of S.G., at the length of 48 m, to the west with the property of the Municipality – the road, at the length of 46 m, and to the south, the line of the village, at the length of 48 m, a decision which entered into force on 17.12.1957.*

*From the case files C.no. 652/1997, of the Municipal Court in Rahovec, it follows that according to the Judgment C.no. 652/1997 of 02.02.1998, the claimants were recognized their rights of the ownership, as co-owners to 1/3 ideal parts of the cadastral parcel no. 500, in the place called "Stepanica-Fusha", with the culture of house and pasture of the third class with the surface area of 0.37,00 ha, as per possession list no. 146 CZ Malisheva, to the name of SOE "Podrimja" in Rahovec, surface area of 0.28,37 ha. From the minutes of the session of 02.02.1998, according to this case file, it follows that the claimants withdrew their claim for the surface area of 0.20.90 ha. The first instance court confirmed that the part of the cadastral parcel no. 500/1, subject of this review, was in the possession of the predecessor of respondent S.M., which was allocated to him by the Agricultural Commission, according to the Law on the Agricultural Reform, and was allocated to the use in 1947, but it was taken back again as per decision no. 3049/1957, of 16.09.1957.*

*... Having in mind the fact determined by the first instance court that the predecessor of the claimants (the Applicants) has purchased the immoveable property in dispute according to a verbal contract from the non-owner S.M., who at the moment of sale in 1948, had no ownership rights over the disputed property, since with the evidence assessed, namely the decision of the Municipal People's Council in Banja, no. 3049/57, dated 16.09.1957, it follows that S.M., farmer from the village of Malisheva, was revoked the possession over the land allocated to him in 1947 by the earlier commission of the Municipal People's Council in Dragobil, as to an agricultural interest holder, since the same person, before expiry of the deadline of 15 years of holding in possession, alienated the property, by selling it to R.M., farmer from Malisheva, from the statement of R.M., given to the minutes of 07.09.1957, before the commission of the Municipal People's Council in Banja, it is verified that the predecessor of claimants (the Applicants) knew that the predecessor of the first respondent had taken the land as an agricultural interest holder.*



*According to provision of Article 24, paragraph 1 of the Law on the Agrarian Reform no. 64/1945, it is provided that the land allocated according to this law cannot be divided, sold, rented or put under lien, in full or in part, in the period of 20 years, while paragraph 2 provides that this prohibition is registered in cadastral records at the moment of registration of land to the person allocated.*

*The first instance court, by expertise of geodesy expert M.K. of 10.10.2007, has found that the parcel in dispute was registered as socially-owned, owned by the Municipality of Malisheva, as per legal basis, namely the decision no. 3049/57 of 16.09.1957.*

*... Starting from this state of the matter, the Supreme Court of Kosovo has found that the first instance court, by determining correctly and completely the factual situation, has applied substantive law in a proper manner when finding that the statement of claim of claimants is ungrounded, while the second instance court has erroneously applied the substantive law, when by approving the appeal of claimants, altered the first instance judgment, and approved the statement of claim of the claimants (the Applicants).*

*The Supreme Court of Kosovo, in its assessment of the challenged judgment pursuant to Article 215 of the LCP, found that the judgment was rendered upon an erroneous application of substantive law, and therefore, it altered the same, as decided by enacting clause of this judgment."*

### **Applicant's allegations**

21. The Applicants allege that the Judgment of the Supreme Court is characterized by substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law. The Applicants also allege that the Supreme Court during the review of the contested matter did not assess correctly the evidence and violated Article 211 of the Law on Contested Procedure because the MA of Malisheva on 19 February 2009 filed revision against the Judgment of 18 December 2008.
22. The Applicants allege that by Judgment of the Municipal Court in Rahovec they were recognized the property right over the contested real estate, while *"...Supreme Court during the trial of the contested matter made a wrong conclusion regarding the property right."*
23. The Applicants allege that MA of Malisheva as a litigating party in this contested matter has acted in a contradictory manner, because for the contested parcel it equipped with construction permit the Applicants, while on the other hand filed revision against the Judgment of the District Court in Prizren, which rendered favourable decision for the Applicants precisely for the same contested parcel. The Applicants allege that these actions of MA Malisheva constitute the violation of the law in general and of the human dignity in particular; that the MA of Malisheva put itself in deception by contradictory actions. As an evidence of the contradictory actions of MA Malisheva the Applicants provide *Ruling of the Directorate for Agriculture, Forestry and*



*Rural Development: (i) Ruling on exchanging agricultural land no.08/2012, 02.05.2012, (ii) Permit of Directorate of Urbanism no. 05/14, (iii) Ruling on urban conditions no. 05/51, 17.05.2012, (iv) Ruling of Directorate of Urbanism for construction permit 05/23, 05/47, 05/51.*

24. The Applicants allege that their case is characterized by confusion and legal deception and with political influence. The claim that: *"...the litigating parties (Applicants) suspect that this legal and factual confusion – deception was caused by political influence, and this may be ascertained by the judgment of the Municipal Court in Malisheva, C.no. 1/2000, in which the first instance judge first recognizes ownership rights to the claimant parties, acting legally and on merits, but when the case comes back for review, the same judge, being unable to confront with the political influence and pressure, rejects the claim, and does not recognize the ownership rights to the plaintiffs..."*
25. Furthermore, the Applicants allege that their rights guaranteed by Articles 46 [Protection of Property] and 121 [Property] of the Constitution have been violated.

#### **Assessment of the admissibility**

26. To adjudicate the Applicants' Referral, the Court has to examine beforehand whether the Applicants have fulfilled the admissibility requirements set out in the Constitution and as further specified in the Law and the Rules of Procedure.
27. In this respect, the Court refers to Article 113 (7), which establishes that:  
*"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."*
28. The Court also refers to the Rule 36 (1) c) of the Rules of Procedure:  
*(1) The Court may only deal with Referrals if:*  
...  
*c) the Referral is not manifestly ill-founded."*
29. In the present case, the Court notes that the primary allegations of the Applicants have to do with alleged substantial violations of the contested procedure, erroneous and incomplete application of the factual situation and erroneous application of the substantive law by the Supreme Court of the Republic of Kosovo.
30. The Court notes that in the present case, the Applicants have not argued how their rights, guaranteed by the Constitution have been violated and they have not proved in which way the procedure in the regular courts was tainted by arbitrariness and partiality, which would imply the violation of constitutional provisions.

31. The Constitutional Court notes that it is not a fact finding Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (*see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 - Applicant Milaim Berisha - Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. no. 20/09, dated 1 March 2011 - issued by the Court on 5 April 2012*).
32. Moreover, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (*see Judgment ECHR App. No 13071/87 Edwards u. United Kingdom, para 34, of 10 July 1991*).
33. The fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 46 [Protection of Property] and 121 [Property] of the Constitution (*see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Meztur-Tiszazugi Tarsulat us. Hungary, Judgment of 26 July 2005*).
34. In these circumstances, the Applicants have not substantiated their allegation for violation of Article 46 [Protection of Property] and 121 [Property] of the Constitution, because the facts presented by them do not show in any way that the regular courts had denied them the rights guaranteed by the Constitution.
35. Consequently, the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to the Rule 36 (1) c) of the Rules of Procedure.




## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 36 (1) c) of the Rules of Procedure, on 12 September 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
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Altay Suroy

**President of the Constitutional Court**



  
Prof. Dr. Enver Hasani