



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

Prishtina, on 15 September 2014
Ref.no.:RK 709/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI51/13

Applicant

Shemsi Haliti

**Request for constitutional review of the Judgment of the Supreme Court
of Kosovo, Rev. no. 113/2010, of 19 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

Applicant

1. The Applicant is Mr. Shemsi Haliti from Prishtina, who is represented by the lawyer, Mr. Gjuran Q. Dema.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Republic of Kosovo (hereinafter: the Supreme Court), Rev. no. 113/2010, of 19 December 2012, which was served on the Applicant on 1 February 2013.

Subject matter

3. The subject matter of the case referred to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court, Rev. no. 113/2010, by which, according to Applicant's allegations, the property right guaranteed by Article 46 of the Constitution was violated.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure) .

Proceedings before the Court

5. On 8 April 2013, the Constitutional Court received the Referral, submitted by the Applicant and registered it under the number KI51/13.
6. On 10 April 2013, the Secretariat of the Court notified the Applicant's legal representative of the registration of Referral and requested from him to submit the written power of attorney for Applicant's representation before the Constitutional Court.
7. On 16 April 2013, the President, by Decision GJR. KI51/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision KSH. KI51/13, appointed the members of the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović (member) and Enver Hasani (member).
8. On 18 April 2013, the Applicant's legal representative submitted to the Court the written power of attorney, requested by the Court on 10 April 2013.
9. On 11 March 2014, the President of the Court requested from the full Court his recusal from the adjudication of this case. On the same date, the Deputy-President of the Court put to vote the request of the President for his recusal and his replacement as a member of the Review Panel. The Court unanimously approved the request of the President of the Court for recusal and unanimously decided that Judge Arta Rama-Hajrizi is appointed as a member of the Review Panel, instead of the President of the Court.
10. On 11 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

11. On 1 July 1989, the Applicant had entered the gift contract with his father H.H.
12. By this contract, H.H in the capacity of the grantor, who is the owner of the cadastral plot NK. No. 9606 with surface area of 0.009.35 ha, consisting of the house, with surface area of 0.00,36 ha, the yard with surface area of 0.05,00 ha and orchard, with surface area of 0.03,49 ha, registered in the possession list no. 3169, donated to the Applicant, in capacity of the grantee 1/3 of the total surface area, without any compensation.
13. On an unspecified date in 1990, the Applicant registered the cadastral plot no. 9606 in his name, in the register of the Directorate for Cadastre and Geodesy in Prishtina.
14. On 26 February 1990, the Secretariat of Urbanism, Communal and Housing Affairs of Prishtina Municipality rendered the Ruling 07 no. 351-846, thereby allowing the construction of the individual house P+1 on the old foundations, with expansion and dislocation.
15. On 26 October 1990, the Applicant entered the contract with the Self-governing Community of Interest on governing the construction land in Prishtina, by which the Applicant was given a permission to regulate the construction land for individual construction with dimensions described in the Ruling on issuing the construction permit.
16. On 15 June 2007, the Municipal Court in Prishtina rendered Judgment C. no. 3147/2004, by which approved the request of the claimants: Xh. K., K. Z., Z. P., N. S., N. H., A. S., N. H., K. B., and S. Z., (the heirs of the deceased H. H.) for confirmation of the property rights regarding the parcel NK. No. 9606 and stated that: *„the claimants are the co-owners of 1/3 of the ideal part of cadastral plot no. 6906, place called “R. Gajdiku” of culture house, yard and orchard, under the possession list no. 3169, cadastral zone Prishtina, whereas the claimant R. H. is the owner of 1/3 of ideal part of this cadastral plot.”*
17. In the same Judgment, the Municipal Court in Prishtina partly approved the claimant's request (in capacity of a counterclaimant) and confirmed that the Applicant is the owner of 1/3 ideal part of the abovementioned property, which he acquired by the gift contract.
18. In the reasoning of its Judgment, the Municipal Court states that based on presented evidence, hearing of witnesses, examination of cadastral registers and of the expertise of the expert of geodesy, concluded that: *“the challenged immovable property was divided by the father of the litigating parties into three equal parts, namely by the former owner, now the deceased H. H., so that 1/3 of ideal part was divided to the claimant R.H. and the respondent Shemsi Haliti, while 1/3 part was divided to the sisters of the above mentioned, namely to the claimants.”*
19. Likewise, the Municipal Court held that: *“the fact that the entire immovable property is registered in the name of the respondent has no importance for the*

claimant's property rights over the parts of the immovable property, divided according to the abovementioned agreement. This is due to the fact that according to administered evidence, respectively the claimants' testimonies and the gift contract, concluded between the deceased H. H. and the respondent, it results the latter was entitled only to 1/3 of ideal part of the challenged immovable property, thus it is found that the registering of the other parts of the immovable property in question under the respondent's name is not legally grounded."

20. The Applicant filed an appeal with the District Court within the legal time limit, against the Judgment C. no. 3147/2004, of 15 June 2007.
21. On 4 February 2010, the District Court in Prishtina rendered the Judgment Ac. no. 478/2008, thereby rejecting the appeal of the Applicant as ungrounded, while it upheld in entirety the Judgment of the Municipal Court.
22. In the reasoning of its Judgment, the District Court in Prishtina stated that: *"According to the panel's evaluation, the respondent's appealed allegations that the challenged Judgment is a result of the erroneous application of the material law, are not grounded because the first instance court, as it was stated above, has determined the fact that the claimants on one side and the counterclaimant-respondent on the other, based on the agreement reached with the deceased H. H. have acquired the right of co-ownership over the challenged immovable property [...] and in this particular situation the first instance court has correctly applied the provisions of Article 13, paragraph 1 and Article 14, paragraphs 1 and 2 of the Law on Basic Property Legal Relations applicable at the time the challenged Judgment was rendered."*
23. The Applicant filed a revision within the legal time limit with the Supreme Court of Kosovo, against the Judgment Ac. no. 478/2008 of the District Court, due to alleged violation of the contested procedure provisions, pursuant to Article 182 paragraph 1 and 2 of the Law on Contested Procedure.
24. On 19 December 2012, the Supreme Court rendered the Judgment Rev. no. 113/2010, by which rejected as ungrounded the Applicant's revision.
25. In the reasoning of its Judgment, the Supreme Court stated that: *"the lower instance courts have correctly assessed that 2/3 of the ideal part of cadastral plot no.6906 belong to the claimants-counter respondents, whereas 1/3 of the ideal part belongs to the respondent-counterclaimant, as they have agreed by verbal agreement when their predecessor divided this immovable property."*

Applicant's allegations

26. The Applicant alleges that *"The first instance Court's Judgment is confusing and not grounded, and those of higher instances have not avoided this confusion and other uncertainties over the contradictions in the enacting clause and those between the enacting clause and their reasoning. These judgments cannot be executed due to the non-existence of the measurements and borders of the contested property and as a result contain substantial violations of the contested procedure provisions."*

27. In addition, the Applicant insists that: *“From the enacting clause it results that the property included in the gift contract has been turned into inheritance, whereas the contract has still remained in force, because it has not been decided on its annulment. This procedural violation with other legal violations presented in this referral, make the final Judgment absolutely non-executable.”*
28. The Applicant also states that *„by approving his referral all flaws of the abovementioned Judgments will be eliminated, related to violation of human rights and freedoms, and in this particular case it will be confirmed that by the abovementioned Judgments were violated the Applicant’s human rights and freedoms respectively the property right over the immovable property, guaranteed by the Constitution of the Republic of Kosovo, Article 46.”*
29. The Applicant further requests from the Constitutional Court, *“to assess the legality and constitutionality of the Judgment of the Supreme Court of Kosovo, with noted number and date and two judgments of the lower instance courts, which violate human rights and freedoms for protection of the immovable property, as a result of the lack of impartial trial, respectively as a result of incorrect application of the material provisions.”*

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of the Procedure of the Court.
31. In this respect, the Court should specifically determine, whether the Applicant has met the requirements, provided by Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.
32. The Court refers to Article 113.7 of the Constitution, which provides:

“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”.
33. In the present case, the Applicant is authorized party and he has exhausted all legal remedies, provided by the law.
34. In addition, Article 48 of the Law also 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.”
35. Furthermore, Rule 36 (2) of the Rules of Procedure provides that:

„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

[...], or

(d) when the Applicant does not sufficiently substantiate his claim”.

36. In this respect, the Court reiterates that it is not its task to act as a court of fourth instance, when reviewing the decisions taken by regular courts. It is still the domain of the regular courts to interpret the law and apply the pertinent rules of both procedural and substantive law (see case *Garcia Ruiz v. Spain*, no. 30544/96, ECtHR Judgment of 21 January 1999-1, § 28).
37. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see the case *Edwards v. United Kingdom*, App. No. 13071/87, Report of the European Commission on Human Rights, of 10 July 1991).
38. In the present case, the Applicant has been provided numerous opportunities to present his case and challenge the interpretation of the facts and the law, which he considers to be as incorrect, before the regular courts of all instances. Nevertheless, the Court concludes that the decisions of regular courts are reasoned and adequately respond in substance to the Applicant's allegations.
39. After reviewing the court proceedings in entirety, the Court has not found that the relevant proceedings have been otherwise unfair or arbitrary (See case *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
40. The Court considers that there is nothing in the Referral which indicates that, when reviewing the case, the regular courts lacked impartiality or that the proceedings were otherwise unfair. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of Article 31 of the Constitution (see case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, Decision of 26 July 2005).
41. Therefore, the Court concludes that the Applicant's allegations were not substantiated by convincing evidence and arguments and should be declared as manifestly ill-founded, pursuant to Rule 36 (2) and d) of the Rules of Procedure.
42. Consequently, for the reasons above, the Referral is inadmissible.

FOR THESE REASONS

Pursuant to Rule 36 (2) b) and d) as well as Rule 56 (2) of the Rules of Procedure, the Constitutional Court, on 11 March 2014, 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani