



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 18 December 2015
Ref. No.:RK869/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI58/15

Applicant

Islam Çerkini

**Constitutional review of
Judgment Rev. no. 210/2014 of the Supreme Court of Kosovo,
of 19 February 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is Mr. Islam Çerkini from village Bibaj, municipality of Ferizaj, represented by Ms. Zejnepe Zenuni, lawyer from Ferizaj.

Challenged Decision

2. The challenged decision is Judgment Rev. no. 210/2014, of the Supreme Court of Kosovo, of 19 February 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by the Constitution of Kosovo under Article 3 [Equality Before the Law], Article 7 [Values], Article 24 [Equality Before the Law] and Article 46 [Protection of Property], as well under Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter, the ECHR).

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter, the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 29 June 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 29 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 14 October 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

9. On 12 September 1979, the Applicant's father A. Ç. (now deceased) bought to a third party D. K. several parcels of land and forest. The sale-purchase contract remained non-formalized. Since then, this property was possessed and used without any obstacle by the Applicant's father, and later by the Applicant himself.
10. On 26 July 2006, the Applicant's father filed a lawsuit with the Municipal Court in Ferizaj for confirmation of ownership based on the sale-purchase contract of 1979 and for keeping in good faith the immovable property for more than 30 (thirty) years.

11. On 24 December 2012, the Municipal Court in Ferizaj (Decision T. no. 340/12) declared the Applicant as a single heir of the entire property of his parents.
12. On 28 December 2012, the Municipal Court in Ferizaj during the preparatory session for the case C.no.433/06 with decision subjectively modified the lawsuit, recognizing to the Applicant the status of a claimant.
13. On 30 April 2013, the Basic Court in Ferizaj (Judgment C. no. 433/06) approved as grounded the Applicant's lawsuit and declared the Applicant the owner of the parcels that were the subject of the lawsuit.
14. The Basic Court considered that *"the Claimant, by credible evidence, has proven the fact that his predecessor and now the claimant himself have held the contesting property in complete possession in good faith since 1979 until 2006 (when the claim was filed), that is, for more than 20 years"*.
15. The Basic Court further concluded that *"the existence of the written piece of evidence in the legal form and level, to the best of the knowledge on legal act or education that the actors present in the sale agreement had, but in their simple, original and authentic manner have clearly reflected that they are carrying out, namely, ascertain by writing the sale-purchase act, which the claimant - A. C. and respondent D. K. had verbally concluded"*.
16. On 17 June 2013, the representative of the third party D. M. filed an appeal with the Court of Appeal, due to essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and violation of the law.
17. On 21 March 2014, the Court of Appeal (Judgment AC. no. 1913/13) approved the appeal of the third party D. M. and modified the judgment of the Basic Court so rejecting entirely the Applicant's lawsuit as ungrounded.
18. The Court of Appeal reasoned that the sale-purchase contract *"without the description of the immovable property which is the object of the contract, without ascertaining whether the sale price had been paid by the purchaser, and, more importantly, without the signature of the contracting parties affixed to it, according to the opinion of this Court, does not represent a sale contract, because this contract does not contain all the elements of a contract and it could not produce legal effects in relation to the contracting parties"*.
19. The Court of Appeal found as ungrounded the legal stance of the Basic Court for possession of property in good faith for a long period *"because the claimant, pursuant to the rules of the adverse possession, could not acquire the ownership right"*.
20. The Applicant filed a request for revision with the Supreme Court, due to erroneous application of the substantive law.
21. On 19 February 2015, the Supreme Court of Kosovo (Judgment Rev. no. 210/2104) rejected as ungrounded the Applicant's request for revision.

22. The Supreme Court stated that *“the second instance court has correctly applied the substantive law, when it modified the judgment of the first instance court and approved the respondents’ appeal and that the challenged judgment does not contain essential violations of the contested procedure provisions because this court has assessed all the appealed allegations as well as the relevant facts and it has provided sufficient reasons in the reasoning of the challenged judgment, which are accepted also by this Court”*.

Applicant’s allegations

23. The Applicant claims that the Judgment of the Supreme Court has violated his rights guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.
24. The Applicant alleges that the challenged Judgment has discriminated him against in the enjoyment of property rights and has violated the principle of legal certainty and the standard of the reasoning of decision.

Admissibility of the Referral

25. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
26. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

“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.”

27. The Court also refers to Article 48 (Accuracy of the Referral) of the Law, which 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”.

28. The Court also takes into account Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if: (d) the referral is prima facie justified or not manifestly ill-founded.

and

(2) The Court shall declare a referral as being manifestly ill-founded if it is satisfied that: (d) the Applicant does not sufficiently substantiate his claim”.

29. The Court recalls that the Applicant alleges that the challenged Judgment “Discriminated the Applicant in the enjoyment of the property right; Violated the principle of legal security; and Violated the standard of reasoning its decision”.
30. However, the Court observes that the Applicant has not explained how and why the challenged Judgment discriminated him and violated the principle of legal security and the standard of reasoning.
31. Moreover, the Court notes that his allegations are based on “*erroneous and incomplete determination of factual situation and erroneous application of the substantive law*”. In reality, these allegations are grounded on arguments related with the determination of facts and application of law.
32. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or of law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality)
33. The Court recalls that the Supreme Court considered that the Court of Appeal “*has provided sufficient reasons in the reasoning of the [appealed] judgment, which are accepted also by this Court*. Thus, the Supreme Court also accepted that “*this contract does not contain all the elements of a contract and it could not produce legal effects in relation to the contracting parties*”.
34. The Court considers that the Supreme Court answered the Applicant’s grounds of appeal thoroughly reasoning why the Applicant’s statement of claim was rejected.
35. In general, the Applicant has not argued how and why the conclusion of the Supreme Court, on the legal consequences of lack of “*all the elements of a contract*”, discriminated him and violated the principle of legal security and the standard of reasoning.
36. More specifically, the Court considers that the Supreme Court broadly elaborated on the concept of alleged acquisition of property rights through sale-purchase contract and the public possession of the property in good faith for a long period of time.
37. In addition, the Court notes that nowhere the regular courts have declared the Applicant as the owner of the disputed properties. In such a situation, the alleged violation of Article 46 of the Constitution [Protection of Property] or of Article 1 of Protocol 1 of the ECHR cannot have happened.
38. The Court observes that the Applicant presented no evidence to support the claim that his right to equality before the law has been violated. In this regard, the Court notes that the Applicant had ample and free opportunity to present his allegations before the regular courts. Thus, the allegation that the Applicant was discriminated against by the challenged Judgment cannot be considered.

39. In fact, the Court considers that the Applicant has not built an allegation on discrimination “on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status”, as required by Article 24 (2) of the Constitution.
40. The Court notes that, as mentioned above, the judgment of the Supreme Court thoroughly analyzed the Applicant’s arguments of the revision on the determination of the facts and on the application of law. Thus, the right to a reasoned decision has not been violated, as alleged by the Applicant.
41. Therefore, the Court considers, in general and more specifically, that the Applicant has neither provided evidence which would point out to the violation of his constitutional rights (See: *Vanek vs. Slovak Republic*, No. 53363/99 ECHR, Decision, of 31 May 2005); nor he has substantiated an allegation on that the proceedings in the Supreme Court have been unfair or arbitrary (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
42. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court on factual and legal matters (legality). It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case *KI70/11*, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
43. In sum, the Court finds that, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 paragraph (1) d) and (2) item b) and Rule 56 (2) of the Rules of Procedure, the Referral is manifestly ill-founded and thus is to be declared as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (2) (b) and Rule 56 (2) of the Rules of Procedure, on 14 October 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

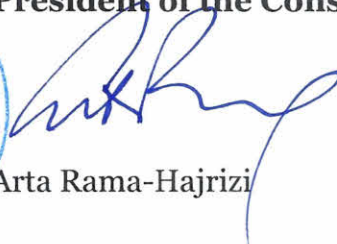
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi