



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

Pristina, 8 July 2013
Ref. No.:RK444/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI62/13

Applicant

Tahir Morina

**Constitutional Review of the Judgment of the Supreme Court in
Prishtina Rev. no. 49/2010 dated 01 February 2013**

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 Tahir Morina, from the village of Gllabar, (hereinafter: the Applicant), who is represented by the lawyer Xhafer Maloku from Klina.

Challenged decision

2. The Applicant challenged the Judgment of the Supreme Court in Prishtina Rev.no. 49/2010 dated 01 February 2013.

Subject matter

3. The subject matter of the case submitted in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), on 23 April 2013, is the confirmation of the property rights over the property, which is the subject of the contract concluded on 21 November 2002.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 20, 22.7 and 22.8 of the Law Nr. 03/L-121, on Constitutional Court of the Republic of Kosovo, dated 15 January 2009 (hereinafter: the Law) and the Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 April 2013, the Applicant submitted the Referral in the Constitutional Court of the Republic of Kosovo and the same was registered under number KI62/13.
6. By Decision of the President, Judge Kadri Kryeziu was appointed as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of Judges: Almiro Rodrigues, Ivan Čukalović and Enver Hasani.
7. On 25 June 2013 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

8. On 21 November 2002, the Applicant, in capacity of buyer concluded sale-purchase contract with V.R., who in the contract was marked as a seller of the real estate, which according to power of attorney Vr.no. 3842/2002, dated 18 November 2002, which was certified in the Basic Court in Ulqin (Republic of Montenegro), is represented by B. M.

9. According to the contract, the Applicant acquires the property right over the seller's property and this is the real estate, which in the possession list was registered under number 791, as cadastral plot no. 533 CZ Klina, as well as the right of transfer of property to his name.
10. On the same day, the Applicant paid to the seller V.R. the contracted price, in the amount of €200.000, 00, and at the same time he registered the real estate in his name in the Directorate for Cadastre in Klina, which is the subject of the contract.
11. V.R. challenges the validity of the contract, concluded on 21 November 2002, and on an unspecified day submitted the request for restitution of property to the Housing and Property Claims Commission in Prishtina (hereinafter: HPCC).
12. On an unspecified date, V.R. initiates the criminal proceedings in the Basic Court in Ulqin, due to fraud, as well as civil claim in the Municipal Court in Klina, with a purpose of the restitution of the possessed property.

Proceedings before HPCC

13. On 18 June 2005, the HPCC in the first instance proceedings, based on available case file and on the opinion of graphologist on the authenticity of signature, by which was signed the power of attorney Vr.no. 3842/2002 dated 18 November 2002 and the sale-purchase contract, which was signed on 21 November 2002, issues the order to return the property to V.R. and at the same time to expel the other party from the property (Applicant).
14. On 31 October 2005, the Applicant duly files appeal against the first instance decision of the HPCC of 18 June 2005.
15. On 08 June 2007, in the second instance proceedings, upon the Applicant's appeal, the HPCC renders the decision to reject the Applicant's request for reconsideration of the first instance decision of 18 June 2005, and to issue final order as the previous one.

Criminal proceedings before the Basic Court in Ulqin (Republic of Montenegro)

16. On 17 April 2007, Basic State Prosecution Office in Ulqin raised indictment in the Basic Court in Ulqin against the defendants, the Applicant and M.B., from Gllogovci, citizen of the Republic of Kosovo, due to criminal offence under Article 207 paragraph 3 in conjunction with paragraph 1. CC RMN (forgery of documents), and criminal offence of as per Article 209, paragraph 1 of the CC RMN [Presentation in verification of false content].
17. On 09 February 2012, Basic Court in Ulqin renders the Judgment [K. nr. 185/08]. In the enacting clause of the Judgment, the Court concludes that, *"during presentation of evidence and hearing of witnesses as well as according to the opinion of the court expert, graphologist, it was confirmed that the personal ID no. 31854, to the name of V.R. issued by the SUP Klina, which was used as authentic on the occasion of certification of power of attorney in the*

Basic Court in Ulqin, is forged public document, that the latter was not issued by SUP Klina, which was confirmed by the document of MIA of Republic of Serbia, no. 205-325/11, of 13 April 2011, The Court assessed this evidence as reliable, because it was issued by a competent authority from which it was ascertained that the personal ID, serial no. CP61221811, reg. no. 31854, is not authentic, and was not issued by SUP Klina, to V.R.”

18. The Court also notes that *“it was undoubtedly confirmed that the person, who certified the power of attorney on 18 November 2002, in the Basic Court in Ulqin in the name of V.R., used forged personal document with registration number 31854, which was concluded by the Court in the certification book, but in the proceedings it was not found that this person was the Applicant or M.T.”*
19. According to this, the Basic Court in Ulqin, by Judgment [K.no.185/08] dated 09 February 2012, acquitted the defendants, the Applicant and M.B. of the indictment, because it was not found that they have committed criminal offence which they were accused of, while the Court suggests to the injured V.R. to file property-legal claim in the contested procedure.
20. On 05 July 2012, the Higher Court in Podgorica, upon the appeal of the State Basic Prosecution Office in Ulqin against the Judgment of the Basic Court in Ulqin [K.no 185/2008] of 09 February 2012, rendered the Judgment [Kz no.1027/2012], by which is rejected the appeal of the prosecution office and upheld the Judgment of the Basic Court [K.no 185/2008] in Ulqin of 09 February 2012.

Proceedings regarding the annulment of sale-purchase contract [1478/2002] in the Municipal Court in Klina

21. On 02 April 2009, the Municipal Court in Klina by Judgment [C.no 48/2004], annuls and declares null and void the sale-purchase contract number 1478/2002 dated 21 November 2002, where as contracting parties appeared the Applicant and V.R.
22. In the enacting clause of the judgment, the Court states that *“the respondent (the Applicant) should waive the possession and vacate the property, registered with the possession list 791 as cadastral parcel no. 533 CZ Klina,, within a deadline of 15 days from the date of service of the judgment, under threat of forced execution.”*
23. The Court ordered the Cadastral Office of the Municipality of Klina to make the changes in the cadastral books pursuant to the judgment and registration of the plot in the name of the claimant, respectively of V.R.
24. On an unspecified date, the Applicant filed an appeal against the Municipal Court in Klina (the appeal of the Applicant does not exist in the case file, but, as basis for paragraph 23 were used claims from the judgment of the Supreme Court).

25. On an unspecified date, the second instance Court rejected the appeal of the Applicant and upheld the first instance judgment (the second instance judgment does not exist in the case file, but as basis for paragraph 24 were used claims from the judgment of the Supreme Court).
26. On 19 March 2013, the Applicant filed a request for revision in the Supreme Court.
27. On 01 February 2013, the Supreme Court rendered the Judgment [Rev. no. 49/2010], by which is rejected the revision of the Applicant as ungrounded.

Applicant's allegations

28. The Applicant alleges that his rights from Article 31 of the Constitution (Right to Fair and Impartial Trial) in conjunction with Article 358, paragraph 5 362-370, and in particular of Article 371 of the Criminal Code of Kosovo (hereinafter: CCK)
29. The Applicant also alleges that *„it is not known who conducted graphology expertise in the procedure before HPCC, but it is said that it was done at a private graphologist in Bulgaria, It was not conducted according to the judicial practice where would be applied the conditions for the claimant to respond to interactive questions of interested parties, but it was done in another manner which does not meet conditions and standards of a court expertise, according to criteria of the Article 371 of the CPK.”*
30. The Applicant alleges that he did not participate personally in the proceedings in HPCC, as an authentic owner and neither authorized another person to represent him in proceedings for the confirmation of ownership in front of HPCC.
31. The Applicant addresses the Constitutional Court with the following request:

“That the Court finds that in the proceedings before the regular courts, these constitutional rights were violated to the responding party (the Applicant):
 - a) *Equality Before Law – Article 24 of the Constitution, because the Applicant was not given a possibility to participate in a procedure before the HPCC, where his property was reviewed, that all evidence were used against him and that the proceedings favoured his opponent V.R.*
 - a) *Right to Fair and Impartial Trial- Article 31 of the Constitution, because the key evidence (graphology expertise) was presented in an unprofessional manner, in a procedure which is not judicial. “*

Assessment of admissibility of the Referral

32. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

33. In this regard, 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.”

34. Although the Applicant states that by decisions of regular courts and by HPCC decision were violated his rights guaranteed by the Constitution and the laws of the Republic of Kosovo, he has not presented any relevant evidence or fact to support that the Housing and Property Claims Commission or judicial authorities have made any violation of his rights guaranteed by the Constitution (see *Vanek against the Slovak Republic, the ECHR's Decision on admissibility in case no. 53363 of 31 May 2005*).

35. The Court holds that pursuant to Section 1.2 of UNMIK Regulation 1999/23 it is provided that the Commission (HPCC) has jurisdiction for deciding:

„Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.”

36. This jurisdiction was clarified by UNMIK Regulation 2000/60, as follows:

“Section 2.5: Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation.

Section 2.6: “Any person with a property right on 24 March 1999, who has lost possession of that property and has not voluntarily disposed of the property right, is entitled to an order from the Commission for repossession of the property. The Commission shall not receive claims for compensation for damage to or destruction of property...”

37. With regards to the present case, the Court reiterates that the question of HPCC decisions was raised in case KI104/10, and on 29 April 2012 adopted Judgment AGJ221/12, in which stated that *“In the Court's view, the HPCC decision of 15 July 2006 must be considered as the final decision, which became res judicata, when it was certified by the HCPP Registrar on 4 September 2006, as was confirmed by the HPCC Letter of Confirmation to the Applicant, dated 7 May 2008. This letter also stated that the procedures in connection with the Applicant's application had been submitted to the Directorate of Housing and Property Directorate in accordance with Section 1.2 of UNMIK Regulation 1999/23, and had been completed, while the remedies that were available to the parties in accordance with the provisions of UNMIK Regulation 2000/60*

had been exhausted.” (see mutatis mutandis in Case Draža Arsić, Constitutional Review of Decision GZ No. 78/2010 of the District Court of Gjilan dated 7 June 2010).

38. The Constitutional Court reiterates that it is not its task to act as a court of appeal in respect of the decisions taken by ordinary courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (*see, mutatis mutandis, Garcia Ruiz v. Spain [VK] no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1*).
39. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety have been conducted in such a way that the Applicant had a fair trial (*see among other authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991*).
40. However, having examined the documents submitted by the Applicant, the Constitutional Court does not find any indication that the proceedings before HPCC and regular courts were in any way unfair or tainted by arbitrariness (*see mutatis mutandis Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of admissibility 31 May 2005*).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and the Rule 36 (2) b) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Dr. Sc. Kadri Kryeziu


Prof. Dr. Enver Hasani

