



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristine, 15 January 2013
Ref. No.: RK341/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 83/12

Applicants

**Muhamet Ukalo
Neime Ukalo**

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.
521/2009, dated 4 June 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 Referral was submitted by Mr. Muhamet Ukalo and Mrs. Neime Ukalo, residing in Prizren (hereinafter: the "Applicants").

Challenged decision

2. The Applicants challenge the Judgment of the Supreme Court, Rev. no. 521/2009, of 4 June 2012, which was served on them on 1 August 2012.

Subject matter

3. The Applicants alleges that the abovementioned judgment violated their rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "ECHR"), namely Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol 1 to the ECHR.

Legal basis

4. Article 113.7 of the Constitution, Article 22 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").

Proceedings before the Court

5. On 17 September 2012, the Applicants submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 5 October 2012, the President of the Constitutional Court, with Decision No.GJR.KI-83/12, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-83/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 5 November 2012, the Referral was communicated to the Supreme Court.

8. On 27 November 2012, 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 21 February 1963, the Applicant's father entered into a sales contract for immovable property with the Socially Owned Company "KBI Progress" (hereinafter: SOE "KBI Progress").
10. On 15 April 1967, the immovable property was sold to a third person, A.Q.
11. On 6 December 1968, the Applicant's father entered into a gift contract for another immovable property with the SOE "KBI Progress".
12. On 1 February 2001, the Municipal Court in Prizren (Judgment C. no. 69/2000) approved the Applicant's claim and confirmed that the contracts entered on 21 February 1963 and on 6 December 1968 are null. Further, the Municipal Court obligated the SOE "KBI Progress" to admit the Applicant's as owners of the immovable property and hand over for free use and possession as well as permit the registration in cadastral service in the name of the Applicant's the immovable property. The Municipal Court in Prizren held that *"Pursuant to Article 37 of the Law on Basic Property (Official Gazette 6/1980, Socialist Federal Republic of Yugoslavia, January 30, 1980) the owner can by claim request the return of the immovable property under the condition that the Applicant can confirm that he/she is entitled to ownership over the returned immovable property."* Furthermore, the Municipal Court held that the contracts that the Applicant's father had entered into are null because they were entered into under pressure and consequently do not have any legal effect. This Judgment became final and binding on 26 March 2001.
13. On 4 April 2001, the Municipal Court in Prizren (Decision C. no. 69/2000) issued a ruling whereby it corrected its Judgment of 1 February 2001. The Municipal Court of Prizren had erroneously not included the total amount of the surface of the immovable property that is to be returned to the Applicant's. This ruling became final and binding on 20 April 2001.
14. On 30 April 2001, the Applicant's filed a proposal with the Municipal Court in Prizren for execution of the final and binding Judgment of the Municipal Court in Prizren.

15. On 22 June 2001, the Municipal Court in Prizren (E. no. 22/01) allowed the execution. On 5 July 2002, A.Q. filed an objection and requested the Municipal Court in Prizren to declare the decision on execution of 22 June 2001 as inadmissible.
16. On 30 August 2002, the Municipal Court in Prizren (Decision E. no. 22/01) suspended the procedure of execution because A.Q. claimed that A.Q. has property right over the contested immovable property. The Municipal Court in Prizren further advised A.Q. to initiate a civil contested procedure to solve who is the rightful owner over the immovable property and to confirm that the execution is inadmissible.
17. On 1 October 2002, A.Q. filed a claim with the Municipal Court in Prizren against the Applicant's and the SOE "KBI Progress" in order to declare the execution as inadmissible and to confirm A.Q.'s right to ownership.
18. On 17 December 2002, the Municipal Court in Prizren (Judgment C. no. 556/02) approved A.Q.'s claim confirming that A.Q. is the owner of the contested immovable property based on possession, tenure, and obligated the Applicant's to recognize A.Q.'s right and to permit the registration of the contested immovable property. Furthermore, the Municipal Court in Prizren declared the execution of the Municipal Court decision E. no. 22/01 of 22 June 2001 as inadmissible. The Municipal Court in Prizren held:
 - a. that A.Q. never took part in the in the proceedings when the Municipal Court issued its Judgment (C. no. 69/2000) on 1 February 2001 and found first about the proceedings when the Municipal Court in Prizren went to the contested immovable property to execute its decision;
 - b. that A.Q. is a possessor in trust over the contested immovable property from 1970 until now. A.Q. has possessed the contested immovable property based on a valid legal transaction – sale –purchase agreement signed on 15 April 1967. A.Q. has used the contested immovable property without being obstructed by anyone or in any way. Furthermore, A.Q. was not aware of an ongoing procedure as to the contested immovable property until the Municipal Court in Prizren went to the contested immovable property to execute decision E. no. 22/01 of 22 June 2001;
 - c. that it is true that the contested immovable property was registered as socially owned property when it was sold to the SOE "KBI Progress" on 21 February 1963, but since the contracts were declared null by the Municipal Court in Prizren on 1 February 2001 (Judgment C. no.

69/2000), then the contested immovable property has never been as social property;

- d. that A.Q. has gained the right to property based on possession – tenure – pursuant to Article 28 paragraph 4 of the Law on Basic Property (Official Gazette 6/1980, Socialist Federal Republic of Yugoslavia, January 30, 1980).

The Applicant's complained against this Judgment to the District Court in Prizren.

19. On 28 January 2004, the District Court in Prizren (Judgment Ac. no. 254/2003) rejected as unfounded the Applicant's complaint and upheld the Judgment of the Municipal Court in Prizren of 17 December 2002. The Applicant's filed a request for revision to the Supreme Court against this judgment.
20. On 21 July 2004, the Supreme Court (Judgment Rev. no. 137/2004) approved the request for revision and annulled the lower courts judgment and returned to the first instance court the case for retrial. The Supreme Court held that "Substantial violations of provisions of contentious procedure stand in the fact that there is a contradiction between what it is said in the reasoning and evidence administered in the session for the main review." Furthermore, the Supreme Court also held that it *"[...] cannot accept the conclusion of the second instance court, since by the Law on Amendment of Law on Basic Property (Official Gazette of Yugo. 29/96) was deleted Article 29 of the Law on Basic Property, which envisaged that the right of ownership to socially owned property with acquisition by prescription, after this amendment on socially owned property can be gained the right to ownership with acquisition by prescription. According to the evaluation of the Supreme Court, the legal norm is rendered to regulate the legal relations in the future, unless explicitly was stated that this norm has retroactive impact. By the abovementioned law was not envisaged that this norm has retroactive impact."*
21. On 2 June 2008, the Municipal Court in Prizren (Judgment C. no. 160/04) approved A.Q.'s claim confirming that A.Q. is the owner of the contested immovable property based on possession, tenure, and obligated the Applicant's to recognize A.Q.'s right and to permit the registration of the contested immovable property. Furthermore, the Municipal Court in Prizren declared the execution of the Municipal Court decision E. no. 22/01 of 22 June 2001 as inadmissible. The Municipal Court in Prizren held:

- a. that A.Q. never took part in the in the proceedings when the Municipal Court issued its Judgment (C. no. 69/2000) on 1 February 2001 and found first about the proceedings when the Municipal Court in Prizren went to the contested immovable property to execute its decision;
- b. that A.Q. is a possessor in trust over the contested immovable property from 1970 until now. A.Q. has possessed the contested immovable property based on a valid legal transaction – sale –purchase agreement signed on 15 April 1967. A.Q. has used the contested immovable property without being obstructed by anyone or in any way. Furthermore, A.Q. was not aware of an ongoing procedure as to the contested immovable property until the Municipal Court in Prizren went to the contested immovable property to execute decision E. no. 22/01 of 22 June 2001;
- c. that it is true that the contested immovable property was registered as socially owned property when it was sold to the SOE “KBI Progress” on 21 February 1963, but since the contracts were declared null by the Municipal Court in Prizren on 1 February 2001 (Judgment C. no. 69/2000), then the contested immovable property has never been as social property;
- d. that A.Q. has gained the right to property based on possession – tenure – pursuant to Article 28 paragraph 4 of the Law on Basic Property (Official Gazette 6/1980, Socialist Federal Republic of Yugoslavia, January 30, 1980).
- e. that *“pursuant to given remarks in the ruling of Supreme Court of Kosovo Rev. no. 137/04 dated 21.07.2005, the court concluded that based on legal rules, which were applicable at the time when this legal relation is established between the claimant A.Q. and previous owner Gj.Q. was valid until entering into force of the law on basic property, the possessor in trust gains the right to ownership after consecutive possession for 20 years, although he was legal possessor. In the concrete case the claimant by all means is possessor in trust since by signing this legal valid contract has considered herself as owner and based on this she was a possessor. On any kind of procedure that took place afterward the claimant was not informed and she did not even know of any development of any procedure in relation to the contested immovable property and neither in relation to the development of this procedure in this court.”*

The Applicant’s complained against this Judgment to the District Court in Prizren.

22. On 13 October 2009, the District Court in Prizren (Judgment Ac. no. 405/2008) rejected as unfounded the Applicant's complaint and upheld the Judgment of the Municipal Court in Prizren of 2 June 2008. The Applicant's filed a request for revision to the Supreme Court against this judgment.
23. On 4 June 2012, the Supreme Court (Judgment Rev. no. 521/2009) rejected as unfounded the request for revision and upheld the judgment of the District Court of 13 October 2009.

Applicant's allegations

24. The Applicants alleges that the Supreme Court judgments, the District Court judgments and the Municipal Court judgments were taken in violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution and Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol 1 to the ECHR, because the Applicants, allegedly, are *"[...] owners of the contested immovable property because they have inherited it. This right, by the Constitution, is untouchable and guaranteed. However, with the regular courts judgments, the right to property is with A.Q."*
25. Furthermore, the Applicants allege that A.Q. *"[...] is not a possessor in trust of the contested immovable property, especially from the day when the Municipal Court in Prizren annulled the contracts [...]"*, i.e. from 1 February 2001.
26. The Applicants also alleges that the Municipal Court in Prizren on 2 June 2008 was impartial and as such violated their rights as guaranteed by the Constitution, Article 31 [Right to Fair and Impartial Trial], because the Municipal Court on 2 June 2008 did not act in accordance with the remarks given by the Supreme Court in its judgment of 21 July 2004, Judgment Rev. no. 137/20.

Assessment of the admissibility of the Referral

27. The Court observes that, in order to be able to adjudicate the Applicants complaint, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
28. Rule 36 1 (c) of the Rules of Procedure provides that *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

29. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
30. 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 among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
31. In the present case, the Applicants merely dispute whether the regular courts entirely applied the applicable law and disagree with the regular courts' factual findings with respect to their case.
32. As a matter of fact, the Applicants did not substantiate a claim on constitutional grounds and did not provide evidence that their rights and freedoms have been violated by that the regular courts. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
33. Therefore, the Applicants did not show why and how the regular courts decided "in a partial manner", thus denying their right to property.
34. It follows that the Referral is inadmissible because it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

FOR THESE REASONS,

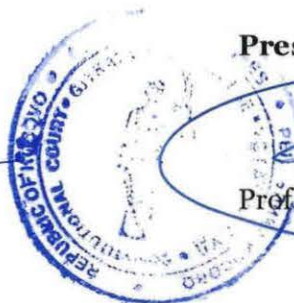
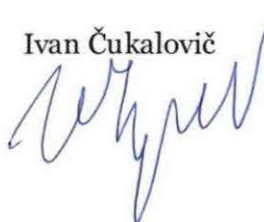
The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 27 November 2012, unanimously

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

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

