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

Prishtina, 18 November 2013
No. ref: RK493/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI84/13

Applicants

Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj

Constitutional Review of the Decision of the Supreme Court of the Republic of Kosovo, Rev. no. 294/2010, dated 10 April 2013.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, 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 is submitted by Gani Sopaj, Ahmet Sopaj and Nazmije Sopaj (hereinafter: the "Applicants"), represented by Mr. Sehad Haliti, a practicing lawyer from Suhareka.

Challenged decision

2. The Applicants challenge the Decision of the Supreme Court, Rev. no. 294/2010, of 10 April 2013, which was served on the Applicants on 5 May 2013.

Subject matter

3. The Applicant request the constitutional review of the Decision of the Supreme Court, Rev. no. 294/2010, because it allegedly 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].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 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 13 June 2013, the Applicants submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 20 June 2013, the President of the Constitutional Court, by Decision No.GJR.KI-84/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KI-84/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 8 July 2013, the Referral was communicated to the Supreme Court.

8. On 18 October 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

9. On 20 September 2000, one of the Applicants, Mr. Gani Sopa, filed a claim for confirmation of the right to property with the Municipal Court in Suhareka.

10. On 10 July 2003, the Municipal Court in Suhareka (Judgment C. no. 113/2000) approved the Applicant's claim as founded. Furthermore, it held that based on the sale-purchase contract the Applicant is the owner of the contested cadastral plot and the respondent Municipality of Suhareka is obliged to recognize the Applicant's property right. The Public Lawyer of the Municipality of Suhareka filed a complaint against this Judgment to the District Court in Prizren.

11. On 9 December 2004, the District Court in Prizren (Judgment Ac. no. 355/2003) rejected the complaint of the Public Lawyer as unfounded and upheld the Judgment of the Municipal Court of Suhareka of 10 July 2003. The Public Lawyer of the Municipality of Suhareka filed a revision with the Supreme Court against the Judgment of the Municipal Court of Suhareka and the District Court of Prizren.

12. On 25 January 2006, the Supreme Court (Decision Rev. no. 63/2005) approved the revision as founded. The Supreme Court annulled the decisions of the lower courts and sent the case back for retrial to the first instance court. In this respect, the Supreme Court held *"[...] the judgments of the lower instance courts are with substantial violations of the Law on Contested Procedure, namely Article 354 paragraph 2 item 14 in conjunction with Article 375 paragraph 1 of the Law on Contested Procedure and because of these defects the judgment cannot be reviewed."*

13. On 15 June 2007, the Municipal Court in Suhareka (Judgment C. no. 69/07) during the retrial rejected as unfounded the Applicants claim that they are owners of the contested parcel on the basis of inheritance. The Municipal Court in Suhareka held that *"The Applicants did not provide real evidence to the court regarding their claim on acquisition of property. Therefore, the contested real estate is registered in the name of the socially owned enterprise [...]"*. Furthermore, the Municipal Court in Suhareka held that *"According to the Court's opinion, the villagers of the village Bukosh did not have the right of property over the contested parcel and did not have the right to sell it to the Applicants predecessor, they did not have legal right for alienation of the contested real estate, so the same were not the owners, because in a way the property was registered and is also now registered as socially owned enterprise."* The Applicants complained against this Judgment to the District Court in Prizren.

14. On 6 March 2008, the District Court in Prizren (Decision Ac. no. 361/2007) approved the Applicants' complaint and sent back the case for retrial to the first instance court. The District Court in Prizren held that *"In reconsideration of this legal matter the court of first instance should assess the statements of witnesses and at the same time requests from geodesy expert in Suhareka or Agency for Cadastre and Geodesy in Prishtina that gives the statement in relation to that that the parcels based on the certificate (tapi), which is found in the case files if it corresponds to the contested parcel and to be given clarification of these legal relevant facts [...]"*.

15. On 3 December 2009, the Municipal Court in Suhareka (C. no. 81/08) approved the Applicants claim and held that the Applicants are owners of the contested parcel on the basis of inheritance. The Municipal Court in Suhareka held that *"Based on the evidence in the case file, especially the ownership certificate (tapia) and the witnesses, the Applicants claim is founded."* The Public Lawyer of the Municipality of Suhareka filed a complaint against this Judgment to the District Court in Prizren.

16. On 29 July 2010, the District Court in Prizren (Judgment Ac. no. 37/2010) approved the complaint of the Public Lawyer as founded and revoked the

Judgment of the Municipal Court of Suhareka of 3 December 2009. The Distrct Court decided that the Applicants claim must be rejected as unfounded because there is no written contract on the transfer of the property and there is no credible witness statement that the sellers of the property were legitimate owners of the property. Furthermore, the District Court held that *"Present Law on contracts and torts as well as law applicable in 1970's when alleged purchase took place requires written form of contract over real estate ownership. Contracts of a kind lacking written form are null and void. This was why Supreme Court of Kosovo in the revision proceedings instructed lower instances to verify if there was a contact dully concluded. Subsequent proceedings reveal no written contract existed."* The Applicants filed a revision with the Supreme Court against this Judgment.

17. On 10 April 2013, the Supreme Court rejected the revision of the Applicants as inadmissible. The Supreme Court held that *"In the Minutes during the main review dated 11.04.2007 it comes out that the claimants have set the amount of contest to 500 DM, respectively €250, and have stated that if the court thinks differently then the amount of the contest can be determined ex-officio. From the case files does not exist the decision of the court for determination of the amount of the contest, so the amount of the contest has remained €250. By Article 211.3 of Law on Contested Procedure, it is envisaged that the revision is inadmissible in legal property contests, in which the statement of claim does not have to do with requests in money by handover of thing or fulfilling of any other promise if the value of object of contest shown in claim of claimants does not exceed the amount of €3000. Having into account the provision of Article 211.3 of Law on Contested Procedure that the revision is inadmissible in legal property matters in which the statement of claim has nothing to do with requests in money with submission of thing or fulfilling of any other promise, if the amount of the contest shown in claim of claimants does not exceed the amount of €3000, while for the fact that the amount of object of contest the claimants have set in the Minutes for main review at the amount of €250, while the claim was submitted in the court on 21.09.2000, according to estimation of this court the revision of claimants in this legal matter is not admissible and as such should be dismissed."*

Applicant's allegations

18. The Applicants allege that *"The Decisions of the Supreme Court, Rev. no. 294/2010, and, Rev. no. 63/2005, are in contradiction with Article 31 [Right to Fair and Impartial Trial], because for the same issue, the same presiding judge took different decisions and this is in violation of the Constitutional right to a fair and impartial trial."*

19. Moreover, the Applicants claim that *"When the two first instance decisions were in favor of the Applicants, the Supreme Court accepted the respondents revision (the Public Lawyer of the Municipality of Suhareka), and now, when the second instance decision was in favor of the respondent, the same presiding Judge of the Supreme Court rejected the revision, arguing that the value of the contested parcel does not exceed € 3,000."*

Admissibility of the Referral

20. 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.

21. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

22. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).

23. In sum, the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants have 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).

24. In this respect, the Court notes that the Applicants did not substantiate a claim on constitutional grounds and did not provide evidence that their fundamental rights and freedoms have been violated by the regular courts. The Supreme Court provided the Applicants with a well reasoned judgment why the revision was rejected the second time. The Court also notes that when the Decision of 25 January 2006 was taken by the Supreme Court the applicable Law on Contested Procedure in its Article 382 provided that *"Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the final decision does not exceed 5, 000 Dinare."* However, when the Decision of 10 April 2013 was taken by the Supreme Court the Law on Contested Procedure was changed and the applicable Law on Contested Procedure in its Article 211.3 provided that *"Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €."*

25. 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).

26. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 18 October 2013 , unanimously

DECIDES

I. TO REJECT the Referral as 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 immediately effective.

Judge Rapporteur | **President of the Constitutional Court**

Arta Rama-Hajrizi | Prof. Dr. Enver Hasani