



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

Prishtina, 17 January 2013
No. ref.: RK383/13

RESOLUTION ON INADMISSIBILITY

In

Case No. KI97/11

Mon Nushi

**Constitutional Review of the Judgment of Supreme Court in Prishtina
Rev.no.87/12 dated 21 03, 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Mon Nushi from the village Vraniq, Municipality of Gjakova, who is represented by the lawyer Rexhep Gjikolli from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The challenged decision of the public authority is the Judgment of Supreme Court in Prishtina Rev.no.87/12, dated 21 March 2011, which, according to personal claim, the Applicant received on 7 April 2011.

Subject matter

3. The subject matter submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 19 July 2011 is the constitutional review of the Judgment of the Supreme Court in Prishtina Rev.no.87/12, dated 21 March 2011, by which the Supreme Court rejected as ungrounded the revision of the authorized representatives of the Applicant and of the Applicant himself Mr. Mon Nushi filed against Judgment of the District Court in Peja Ac.no.404/2003, dated 15 November 2006.

Legal basis

4. Article 113.7 of the Constitution, Articles 22 and 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 , and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. On 19 July 2011, the Constitutional Court received by mail the Referral submitted by the lawyer Rexhep Gjikolli, who is representing the Applicant Mr. Mon Nushi from Gjakova and this Referral was registered in the Court with no. KI 97/11.
6. On 14 November 2011, the Constitutional Court sent a letter to the Applicant's representative, requesting necessary additional documentation for further processing of the Referral.
7. On 22 November 2011, the Court received via mail the additional documentation from the Applicant's representative and attached to the Referral the Judgment of District Court in Peja C.no.57/83 dated 20 May 1987 and the Judgment of District Court in Peja Ac .no 4040/03 dated 15 November 2006.
8. On 17 August 2011, the President of the Court, by Decision No. GJ.R.KI 97/11 appointed the judge Altay Suroy as Judge Rapporteur, while by decision KSH 97/11, appointed the Review Panel composed of judges: Almiro Rodrigues, Ivan Čukalović, and Gjyljeta Mushkolaj,
9. On 26 November 2012, the President of the Court by a new decision replaced the decision KSH 97/11, so that in the item one appointed in the Review Panel the Judge Kadri Kryeziu instead the judge Gjyljeta Mushkolaj, due to the end of her mandate.
10. On 17 January 2012, the Review Panel reviewed the report of Judge Rapporteur and recommended to the full Court the inadmissibility of the referral.

Summary of facts

11. On 18 September 1981, according to Applicant's claims, Mr. Mon Nushi in capacity of buyer reached the sale-purchase agreement with Mr. Mušović Arif from Gjakova in capacity of seller with the subject of the agreement the sale-purchase of immovable property-house and yard, which was located in Gjakova, street Miloš Gilić no. 139

12. This alleged contract was not submitted together with the Referral and its existence was not either confirmed by regular courts in the later court decisions.
13. In fact, the District Court in Peja, by Judgment P.no.57/83 had concluded that such a contract, claimed by the Applicant does not have legal value, because it was signed in contradiction with legal provisions in force at that time. However, confirming the fact that Mr. Mon Nushi had paid a certain amount of money to Mr. Mušović, the court had concluded that he was damaged, therefore by Judgment it ordered his compensation at the amount of 1.950.000 of then dinars with 7.5% interest rate starting from 18 January 1983.
14. On 19 February 2002, the Municipal Court in Gjakova issued Judgment C.nr.3004/2000, by which rejects as **ungrounded** the claim of the claimant Mon(Nue)Nushi from village of Vraniq, Municipality of Gjakova, by which he requested that the Court OBLIGES the claimant Arif (Amri) Mušović to **conclude and confirm** the sale-purchase agreement of the immovable property by which the respondent sells to claimant the immovable property, which is registered in the cadastral plot no. 305/4, with culture house with yard with area 0,01.15 ha and with culture yard with area 0.02.14 ha, according to the possession list no.1133 MA-Gjakovë-city.
15. In the reasoning of the Judgment, the Municipal Court in Gjakova held that from the case file is confirmed as indisputable the fact that the immovable property, which is the subject of the contest in the cadastral documentation of Gjakova, is registered as a property of the respondent Mušović. The Court also concluded that there was never a formal contract, signed and certified in the court according to the legislation in force, between the parties that are now in dispute and according to the Judgment of the District Court in Peja Civ.57/83 is confirmed that the respondent, respectively Mr. Mušović was obliged to return to the Claimant Mr. Mon Nushi the amount of 1.950.000 dinars of that time.
16. In the same judgment, the Municipal Court in Gjakova emphasized the fact that the claimant has never entered into possession of the property, which he alleges that he bought.
17. Mr. Mon Nushi through his representative, the lawyer Teki Bokshi, filed appeal in the District Court in Peja against this Judgment.
18. On 15 November 2006, the District Court in Peja rejected the appeal of the claimant Mr. Mon Nushi and the appeal of his representative, the lawyer Teki Bokshi, by confirming the Judgment of the Municipal Court in Gjakova C.no.3004/2000, dated 19 February 2002.
19. In the reasoning of this Judgment, the District Court stated that reviewing the appeals filed by claimant and his representative found that the court of first instance "with the necessary evidences has determined in correct and complete manner the factual situation and with the rightful assessment of the evidences, has rightfully applied the substantial law when finding that the statement of claim is ungrounded and in the reasoning gave sufficient legal and factual reasons for relevant facts important to the rightful solution of this matter, which this court accepts as well."
20. Against this Judgment, the Applicant Mr. Mon Nushi filed revision in the Supreme Court of Kosovo.

21. On 21 March 2011, Supreme Court of Kosovo rendered Judgment Rev. no 87/2008 by which rejected as ungrounded the revisions of two authorized representatives of Mr. Mon Nushi as well as of the claimant himself Mr. Nushi, filed against Judgment of District Court in Peja Ac.no.404/2003 dated 15 November 2006.
22. In the reasoning of this Judgment is said that, "the Supreme Court found that the courts of lower instances, by determining in a correct and complete manner factual situation have rightfully applied the provisions of contested procedure and of substantive law when they found that the statement of claim of the claimant is ungrounded.

Applicant's allegations for constitutional violations

23. The Applicant alleges that by the Judgment were violated Article 31 of the Constitution (Right to Fair and Impartial Trial) Article 6.1 ECHR together with its protocols. The Applicant further states that the Articles 7,21,22,31 46.53 and 121 of the Constitution were violated.

Assessment of the admissibility of the Referral

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

25. In this respect, the Court refers to Article 113.7 of the Constitution where is provided:

"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."

26. The Court is also referred to the Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

- (1) The Court may only deal with Referrals if:
 - c) the Referral is not manifestly ill-founded

27. Referring to the Applicant's referral and of the alleged violations of the constitutional rights, the Constitutional Court states that:

28. Constitutional Court is not the Court of verification of facts and on this occasion it wants to emphasize that the determination of complete and correct factual situation is a full jurisdiction of regular courts, such as this specific case the Supreme Court, by rejecting the revision of the claimant and of his representatives and by leaving in force the Judgment of the District Court in Peja, and that its role (of the Constitutional Court) is to provide the compliance with the rights, guaranteed by the Constitution and other legal instruments and therefore it cannot act as a "court of fourth instance", (see, *mutatis mutandis, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65*)

29. Taking into account the above, according to general rule, the Court will not oppose the findings of the regular courts, such as the application of the internal law, the assessment of evidence in the trial, the justice of a result in a civil dispute or the guilt or not of an accused in a criminal matter.

30. In extraordinary circumstances, the Court may put into question these findings, whether they are tainted by a flagrant and evident arbitrariness, contrary to the justice and fair trial, causing violation of the Constitution or ECHR. (*Syssoyeva and others against Latvia (sing out) [DHM], § 89*) what while reviewing Mr. Nushi's Referral, the Court could not find elements of arbitrariness in the challenged decisions.
31. The fact that the Applicant is unsatisfied with the outcome of the case, cannot serve as the right to file an arguable Referral for violation of the Article 31 of Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *MezoturTiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005* or , *Tengerakis v. Cyprus*, no. 35698/03, decision dated 9 November 2006, § 74).
32. Constitutional Court in the Judgment of Supreme Court Rev.no.87/12 dated 21 March 2011, did not find elements of arbitrariness or alleged violation of human rights as the Applicant alleged.
33. Under these circumstances, the Applicant did not "substantiate sufficiently his allegation" and that it cannot be concluded that the Referral was grounded, therefore the Court, pursuant to the Rule 36 paragraph 2 item c and d, finds that it should reject the Referral as manifestly ill-founded and consequently

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 of the Constitution and Rule 36 paragraph 2 items (c) and (d) of the Rules of the Procedure, in its session held on 17 January 2013, unanimously

DECIDED

- 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

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani