



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

Prishtina, 12 December 2013
Ref. No.: RK514/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI98/13

Applicant

Muharrem Alija

**Constitutional review of the Judgment of the Supreme Court of Kosovo,
Rev. 121/2010 of 19 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 Mr. Muharrem Alija (hereinafter: the Applicant), with residence in Peja.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. 121/2010, of 19 February 2013, served on the Applicant on 11 March 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court (Rev. No. 121/2010, of 19 February 2013), which upheld the Judgments of the Municipal Court in Gjakova and of the District Court in Peja.
4. The Judgment of the Municipal Court in Gjakova rejected the claim of the Applicant and other claimants for confirmation of the ownership over immovable properties, or exchange with other properties, or pecuniary compensation.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 July 2013, the Applicant submitted the Referral with the Constitutional Court (hereinafter: the Court).
7. On 5 August 2013, the President of the Court based on Decision GJR.KI 98/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court based on Decision KSH. KI 98/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 27 August 2013, the Court notified the Applicant of the registration of the Referral, and requested from Applicant to submit the return receipt, which shows the date when the Judgment of the Supreme Court of Kosovo Rev. No. 121/2010, of 19 February 2013, was served on him. On the same date, the Court notified the Supreme Court of registration of the Referral.
9. On 29 August 2013, the Applicant submitted to the Court the copy of the return receipt, which shows that the Judgment of the Supreme Court, Rev. No. 121/2010, of 19 February 2013, was served on the Applicant on 11 March 2013.
10. On 19 November 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

11. The Applicant together with his brother D. A. and his niece XH. K., in their capacity of heirs of the deceased M. A. against Water Supply Company “*Hidrosistemi Radoniq*” and Irrigation Company “*Radoniq-Dukagjin*” in Gjakova had filed a claim in the Municipal Court in Gjakova, thereby claiming confirmation of co-ownership in equal shares over immovable property registered as parcel no. 933, surface area of 0.92.00 ha and parcel no. 933/2, surface area of 0.14.68 ha.
12. According to the Applicant, the abovementioned immovable property was owned by his father, who used the same while he was alive, further claiming that his descendants also continued to use the property until it was flooded by the lake of Radoniqi.
13. In the claim it was further specified that the Water Supply Company “*Hidrosistemi Radoniq*” and the Irrigation Company “*Radoniq-Dukagjin*” in Gjakova [...] *“are ordered to accept this, and for these parts of parcels mentioned, to transfer the ownership to the claimants, as substitution and compensation, of another equivalent immovable property, or pay the amount of 33.952,00 €, in compensation of value of the aforementioned parcels [...].”*
14. According to the records of the Service for Cadastre and Real Estate in Gjakova (No. 01-952-2-58, of 16 February 1995), upon changes in status of immovable property pursuant to administrative decisions of 1933 (the year when the property was registered in the name of the Applicant’s father) and further on, parcels no. 933 and 933/2, pursuant to expropriation decisions of the Secretariat of the Municipality of Gjakova of 18 December 1978 and 7 March 1978, for the development needs of the hydro-system “*Radoniq*” were transformed to socially-owned property of the Socially Owned Enterprise, Economic Water Organization “*Metohija*”, the predecessor of the Socially Owned Enterprise “*Hidrosistemi Radoniq*” in Gjakova. In 1993, parcels no. 933 and 933/2 were joined in the possession list no. 1, in the name of the Socially Owned Enterprise “*Hidrosistemi Radoniq*”.
15. On 26 May 2008, the Municipal Court in Gjakova rendered Judgment (C. no. 495/05) thereby rejecting the Applicant’s claim as ungrounded in its entirety.
16. The Municipal Court in Gjakova in its Judgment (C. No. 495/05, of 26 May 2008) reasoned that the first respondent’s legal predecessor, respectively the Socially Owned Enterprise of potable water “*Hidrosistemi Radoniq*” in Gjakova acquired the property in terms pursuant to [...] *“valid legal works, in an original acquisition manner, from the MA Gjakova. This stance of the court is made more reliable by the fact that pursuant to Article 3 para.1 of the Law on registration of real properties in social ownership (Official Gazette of SAP of Kosovo no. 37/71), a Law also applicable according to UNMIK Regulation no. 1999/24, it is provided that “registration of real property in social ownership shall be carried out on the basis of: an effective court decision or other administrative body decision (in the present case the administrative body) which determines that real property has passed to social ownership. [...] In the present case, it is also worth mentioning the fact that the real property in*

question, before being flooded by waters of the Hydro-system, the legal predecessor of the first respondent, was socially-owned by the Local Community Gergoc, and an unategorized public road, which is a separate category of ownership, upon which natural persons cannot acquire ownership, due to their public use.”

17. The Municipal Court also considered that the Applicant and the claimants had not proved that they have fulfilled their obligation, respectively the payment of regular annual taxes and until the conclusion of the main hearing they had not managed to prove to the Court that they have inherited the real estate in question from their legal predecessor.
18. Against the Judgment of the Municipal Court in Gjakova (C. No. 495/05, of 26 May 2008), the Applicant, D. A. and XH. K., filed an appeal with the District Court in Peja.
19. On 10 December 2009, the District Court in Peja with Judgment (Ac. No. 223/09) rejected as ungrounded the complaint of the Applicant and other claimants, and upheld the Judgment of the Municipal Court in Gjakova (C. No. 495/05, of 26 May 2008).
20. The District Court in Peja found that the first instance court determined in a full and correct manner the factual situation, by concluding that in 1978, the real property was transformed into social ownership, pursuant to a final decision of the competent authority, thereby also finding that the substantive law was applied in a correct manner.
21. The District Court in Peja also concluded that the property restitution claim was filed for the first time by the claimants in 1996, respectively 18 years from the time real property was transformed into social ownership, and was held permanently in possession by legal persons, thereby finding that [...] *“property rights of claimants’ predecessors and claimants had ceased to exist pursuant to Article 45 of the Law on Basic Property Relations. This is due to the fact that pursuant to Article 226 (228) of the Law on Joint Labor, it is explicitly provided that if real property is transformed into socially owned property and in the present case, social property without legal basis, the restitution of the latter can be required within the time limit of 5 years, starting from the day of becoming aware and at the latest, within the time limit of 10 years”*.
22. Against the Judgment of the District Court (Ac. No. 223/09 of 10 December 2009), the Applicant and other claimants filed a revision with the Supreme Court of Kosovo, with allegation for substantial violation of the contested procedure provisions and erroneous application of substantive law.
23. On 19 February 2013, the Supreme Court of Kosovo rendered a Judgment (Rev. No. 121/2010), thereby rejecting as ungrounded the revision filed against the Judgment of the District Court (Ac. No. 223/2009 of 10 December 2009).
24. The Supreme Court of Kosovo found that [...] *“the lower instance courts, based on correct and complete determination of factual situation, have correctly applied contested procedure provisions and substantive law, and that the*

challenged judgment and the judgment of the first instance court do not contain substantial violations of the contested procedure reviewed ex officio by this Court, and that the courts of lower instance have provided sufficient reasons on relevant facts for a fair adjudication of this legal matter, which are accepted also by this court.”

25. The Supreme Court of Kosovo in its Judgment further held that [...] *“lower instance courts have correctly assessed that the first respondent acquired the property in an original acquisition manner, based on final decision of the competent authority, in the present case, the administrative authority.”*

Applicant’s allegations

26. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 121/2010 of 19 February 2013) violates his rights guaranteed by the Constitution, respectively Article 46 [Protection of Property], Article 3 [Equality before the Law], and Article 24.1 [Equality before the Law] of the Constitution.
27. Regarding his allegation for violation of Article 46 [Protection of Property], of the Constitution, the Applicant claims that his right guaranteed by the Constitution was denied because the owner of the contested real property was his predecessor and that he and other claimants are his legal heirs.
28. Regarding his allegation for violation of Article 3 [Equality before the Law] and Article 24.1 [Equality before the Law] of the Constitution, the Applicant alleges that the principle of equality before the law was not respected, because in the present case, priority was given to [...] *“social organizations of former Yugoslavia rather than claims by natural persons.”*
29. The Applicant concludes by requesting from the Constitutional Court that: *“the Judgment of the Supreme Court of Kosovo Rev. No. 121/2010 of 19.02.2013 to be declared unconstitutional and as such to be quashed with a suggestion that the claimants’ request for compensation, either by another property or monetary compensation, to be approved.”*

Assessment of admissibility of the Referral

30. First of all, in order to be able to adjudicate the Applicant’s Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
31. In this respect, Article 113, paragraph 7 of the Constitution 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.”
32. In addition, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*

33. In the present case, the Court notes that the Applicant sought recourse to protect his rights before the Municipal Court in Gjakova and District Court in Peja and finally before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Judgment of the Supreme Court on 11 March 2013 and that he submitted the Referral to the Court on 10 July 2013.
34. Therefore, the Court considers that the Applicant is an authorized party and that he has exhausted all legal remedies available under the applicable law and that his Referral was submitted within the time limit of four months.
35. Nevertheless, the Court should also take into account Rule 36 of the Rules of Procedure, which provides that:
- “(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*
- “(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
- [...], or*
- b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
- [...], or*
- d) when the Applicant does not sufficiently substantiate his claim”*
36. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 121/2010 of 19 February 2013) by which were upheld the Judgment of the Municipal Court in Gjakova (C. No. 495/2005 of 26 May 2008) and of the District Court in Peja (Ac. No. 223/2009 of 10 December 2009) violates his rights, guaranteed by the Constitution, respectively Article 46 [Protection of Property], Article 3 [Equality Before the Law] and Article 24.1 [Equality Before the Law] of the Constitution, by claiming that the said Judgments [...]” *disregard the property right as a fundamental right guaranteed by the Constitution of the Republic of Kosovo and by the European Convention on human rights as well as the fact that there was no procedure regarding the expropriation.”*
37. In this regard, the Constitutional Court reiterates that under the Constitution it is not its task to act as a fourth instance court with respect to decisions taken by the regular courts. It is a duty for the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
38. The Constitutional Court can only consider whether the evidence has been presented in a correct 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 *inter alia* Case *Edwards v. United Kingdom*, Application No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

39. Based on the case file, the Court notes that the reasoning given in the last Judgment of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts have not been unfair or arbitrary (see, *mutatis mutandis*, Shub vs, Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).
40. Moreover, the Supreme Court in its Judgment confirmed that “*the lower instance courts have rightly assessed that the first respondent has originally acquired the ownership on the basis of the final decision of the competent organ [...]*”.
41. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and the Applicant has not sufficiently substantiated his allegation.

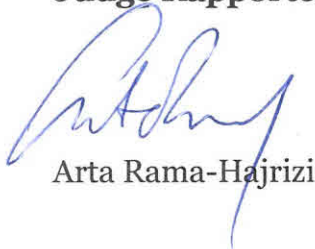
FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 19 November 2013, unanimously:

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- 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



Arta Rama-Hajrizi

President of the Constitutional Court



Prof. Dr. Enver Hasani