



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 16 December 2013
Ref. no.: RK524/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI99/13

Applicant

Liman Maloku

**Constitutional Review of the Judgment of the Supreme Court of
Kosovo, Rev. No. 195/2011, of 28 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. Liman Maloku from the Municipality of Klina, who is represented with power of attorney by Mr. Xhafer Maloku from the Municipality of Klina.

Challenged decision

2. Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013, which was served to the Applicant on 28 June 2013.

Subject matter

3. The subject matter has to do with Constitutional review of the decision of the Supreme Court Rev. No. 195/2011, of 28 February 2013, affirming the decisions of the regular courts. Those decisions declared invalid the contracts on sale-purchase of immovable property, concluded between the Applicant and the owners of the parcels.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 20 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 Rules of Procedure.

Proceedings before the Court

5. On 10 July 2013, the Applicant submitted this Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 August 2013, the President by Decision GJR. No. 99/13, appointed Judge Robert Carolan, as Judge Rapporteur. On the same day, the President, by Decision no. KSH.99/13, appointed Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 26 August 2013, the Constitutional Court notified the Applicant and the Supreme Court on registration of this Referral.
8. On 26 September 2013, the Court requested from the Basic Court in Peja and from the Applicant, to submit to the Court the receipt, which proves when the Applicant received the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013.
9. On 4 October 2013, the Basic Court in Peja submitted to the Court a letter which proves that the Applicant received the Judgment of the Supreme Court of Kosovo, Rev. No. 195/2011, of 28 February 2013, on 26 June 2013.
10. On 21 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

11. On 7 January 2003, the Applicant concluded four contracts on the sale and purchase of immovable property with the sellers of the following parcels:

- D. B from Klina, the cadastral plot no. 1933/2, with area 0.14,29 ha, registered in the possession list no. 452 CZ Drsnik;
- D. V from Klina, the cadastral plot no. 1933/5, with area 0.18,92 ha, registered in the possession list no. 453 CZ Drsnik;
- D. S from Klina, the cadastral plot no. 1933/3, with area 0.14,29 ha, registered in the possession list no. 450 CZ Drsnik;
- D. R from Klina the cadastral plot no. 1933/4, with area 0.14,29 ha registered in the possession list no. 451 CZ Drsnik (hereinafter; the sellers of immovable property).

In the name of all these sellers of immovable property, the contracts were signed by Mr. M. M, with a general power of attorney dated 8 January 2003.

12. On 7 October 2009, the Municipal Court in Klina, by Judgments:

- C. No. 196/06,
- C. No. 197/06,
- C. No. 149/06 and
- C. No. 198/06,

acted upon the claim of D. B, D. V, D. S and D. R for annulment of the aforementioned contracts in paragraph 11, due to the fact that the sellers of the immovable property alleged that they have not signed the power of attorney, according to which Mr. M. M signed the contracts in their names, the Municipal Court in Klina approved their claim.

13. The Municipal Court in Klina declared invalid the contracts on the sale-purchase of immovable property and ordered that in records of the Municipality of Klina that all abovementioned parcels in paragraph 11, in the cadastral books be returned in the names of the sellers of immovable property. The Municipal Court in its reasoning in the judgments above, after reviewing the facts, further held:

“The Transaction Contract lacks the will of consent of one of the contracting parties and it was found that it was not binding agreement (Article 26 of the LOR). Thus, the Transaction Contract is declared invalid pursuant to Article 103, paragraph 1 of the LOR.”

14. The Applicant filed an appeal in the District Court in Peja against the Judgments of the Municipal Courts in Klina, which are specified in the paragraph 12.

15. The District Court in Peja, acting upon the appeal rendered the following Judgments:

- Ac. no. 19/10, of 7 February 2011,
- Ac. no. 20/2010, of 9 March 2011,
- Ac. no. 22/2010 of 9 March 2011,
- Ac. nr. 21/10, of 7 February 2011,

which, in their reasoning are completely the same, and rejected the Applicant's appeal as ungrounded. The District Court in Peja in its reasoning held that:

"The challenged Judgment did not contain substantial violations of the provisions of contested procedure, which are investigated by the second instance court ex officio pursuant to Article 194 of the LCP. Likewise, the factual situation was determined by the first instance court correctly and completely so that the accuracy of the factual situation is not doubted by any of the appealed allegations and for this reason the first instance court has also correctly applied the substantive law. The District Court took this stance, due to the fact that the contract, which was annulled was not duly concluded as provided by Article 26 of the Law on Obligations Relationship (LOR)... From the abovementioned reasons, pursuant to Article 103 of LOR, the first instance court has rightly annulled the contract in question, which is contrary to legal order provided by the Constitution, the mandatory provisions and the moral of society."

16. From the facts presented in the Referral form, it results that the Applicant addressed the Supreme Court with the request for revision, only against the Judgment of the District Court in Peja Ac. no. 21/10 of 7 February 2011.
17. On 28 February 2013, the Supreme Court, by deciding on the Applicant's request for revision, rendered the Judgment Rev. no. 195/2011, whereby rejecting the revision, against the Judgment of the District Court in Peja Ac. No. 21/10 of 7 February 2011, as ungrounded. In its reasoning, the Supreme Court further stated:

"... the Supreme Court completely approved legal point of view of lower instance courts since the Judgments do not contain either essential violations of the provisions of contentious procedure, which this Court notices ex officio, or violations pursuant to Article 182, paragraph 2 of the Law on Contested Procedure, that the revision referred to... According to the findings of the Supreme Court, in the present case, the challenged contract is absolutely null and void, given that the seller has not authorized anyone to conclude contract, which in fact was concluded without his knowledge and his will, therefore it is contrary to the law and other imperative provisions."

Applicant's allegations

18. The Applicant alleges that by the Judgment of the Supreme Court of Kosovo Rev. No. 195/2011, of 28 February 2013, his rights, protected by the Constitution, Article 31 (Right to Fair and Impartial Trial) and Article 24 (Equality Before the Law) of the Constitution were violated.
19. The Applicant requests from the Constitutional Court a decision, which would:

"I want to have a fair and impartial trial, and this is achieved only if I confront with Bllagoje Dabizhleviq, when the truth will be brought to light..."

20. The Applicant also asks to have a trial where B. D can be confronted to establish that he paid 175000 Euros to B. D.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court should examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

22. 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."

Regarding these referral, the Court notes that the Applicant is a natural person, and that he is an authorized party in compliance with Article 113.7 [Jurisdiction and authorized parties] of the Constitution.

23. The Court should also determine whether the Applicant, in compliance with the requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In present case, the Applicant has exhausted all available legal remedies according to the law in force.
24. The Applicant should also show that he has met requirements of Article 49 of the Law, regarding the submission of referrals within the legal time limit. From the case file there is no evidence that would rebut the Applicant's allegations that he received the judgment of the Supreme Court of Kosovo on 28 June 2013. Therefore, the Referral was submitted within the time limit of four (4) months, as it is provided by the Law and Rules of Procedure.
25. Regarding the Referral, the Court also takes into account Rule 36.2 of the Rules of Procedure, which provides that:

(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;"

26. In this respect, The Constitutional Court reiterates that, under the Constitution, it is not its task 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*, Garcia Ruiz v. Spain, no. 30544/96, ECHR, Judgment of 21 January 1999, para. 28, see also Case no. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

27. 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 has had a fair trial (see, *inter alia*, Edwards v. United Kingdom App. No. 13071/87, Report of the European Commission on Human Rights, of 10 July 1991).
28. From the case file, the Court notes that the reasoning, of the judgments rendered by the District Court in Peja is clear, and after the review of all proceedings, the Court also found that the proceedings in the Supreme Court were fair and not arbitrary (See, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECHR, Decision of 30 June 2009). Furthermore, the Judgment of the Supreme Court of Kosovo Rev. No. 195/2011, of 28 February 2013, is clear and well-reasoned. The courts specifically addressed the Applicant's request to have B. D testify at trial and reasoned that his testimony would not be relevant even if he could be found and brought to the trial to testify because there was no dispute that the Applicant paid the money in a fraudulent scheme. The courts reasoned that the only issue is whether the attorney in fact had the authority to sell the immovable property in dispute.
29. In addition, the Applicant has not submitted any *prima facie* evidence, indicating a violation of his rights under the Constitution (see, Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application No. 53363/99 of 31 May 2005)
30. The facts submitted by Applicant have not justified the allegation of a violation of his constitutional rights and the Applicant has not sufficiently substantiated his allegations.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2 (b) and (d) of Rules of Procedure, on 21 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: and,
- IV. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani