



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Adresa: Perandori Justinian, PN. Prishtine
T: +381 (0)38 220 104; F: +381 (0)38 220 112; www.gjk-ks.org

Pristina, 22 november 2010
Ref. No.:RK58/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 53/09

AVDI KASTRATI

v.

DECISION OF THE DISTRICT COURT OF PRIZREN
AC.No.540, DATED 8 JUNE 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court, composed of

Enver Hasani, President;
Kadri Kryeziu, Deputy President;
Robert Carolan, Judge;
Almiro Rodrigues, Judge;
Snezhana Botusharova, Judge;
Ivan Čukalović, Judge;
Gjylieta Mushkolaj, Judge; and
Iliriana Islami, Judge,

Unanimously adopts the following resolution on inadmissibility.

The Applicant

1. The Applicant is Avdi Kastrati of Prizren, Kosovo.

The Challenged Decision

2. Decision of the District Court of Prizren, Ac.No.540, of 8 June 2009.

Subject Matter

3. The Applicant claims that the District Court of Prizren through its decision Ac.No.540, dated 8 June 2009, violated the Kosovo Constitution by failing: (1) to guarantee equal protection of his rights in a court proceeding (Constitution Article 31.1); (2) to offer a fair and impartial hearing for the determination of his rights and obligations (Constitution Article 31.2); and (3) to offer judicial protection and effective legal remedy for his constitutionally guaranteed right to property (Constitution Article 54).

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo, Article 20 of Law on the Constitutional Court of the Republic Kosovo, No. 03/L-121, ("the Law") and Section 54(b) of the Rules of Procedure of the Constitutional Court ("the Rules").

Summary of the Proceedings Before the Court

5. On 12 October 2009, the Applicant filed a Referral to the Constitutional Court.
6. The President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur. The President also appointed the Review Panel, consisting of Judges Snezhana Botusharova, presiding, Enver Hasani and Ivan Cukalovic. The Review Panel considered the Report of the Judge Rapporteur at private deliberations on 16 July 2010 and recommended the full Court to reject the Referral as inadmissible.
7. Judge Altay Suroy at one stage had acted as Attorney for one of the parties who was involved in the contested proceedings. Thus, Judge Altay Suroy requested exclusion from consideration of the matter and that was accepted by decision of the Court.

The Facts

8. On 24 November 1997, Driton Xharra entered into an agreement with the Applicant to place a mortgage on Mr Xharra's immovable property located in Prizren at Adem Jashari Street in the amount of 300.000 DM, being 225,000 DM for principal and 75,000 DM interest, for the period of one (1) year due on 1 December 1998 to secure the debt obligations of his friend, Fatmir Qollaku.
9. The Applicant drafted a contract of sale that stated Mr Xharra sold the property to the Applicant on 26 November 1997 for 300.000 DM, which the Applicant had paid in full and required Mr Xharra to transfer title, ownership, and possession of the property to the Applicant by 10 December 1999.

10. The contract was executed under the belief that it pertained to the previously discussed loan agreement that placed a mortgage on his property.
11. In the events that ensued Mr Xharra was unable to repay his debt of 300,000 DM to the Applicant by the stipulated deadline of the agreement.
12. On 24 June 2000, the Applicant entered into a new agreement with Mr Xharra concerning the original debt whereby Mr Xharra was obliged to pay the Applicant 330.000 DM by 01 December 2000, or Mr Xharra would forfeit possession, ownership, and title of the mortgaged property.
13. Mr Xharra reached a new agreement with the Applicant on 30 March 2002, which required Mr Xharra's brother-in-law Islam Kastrati to pay 230.000 DM to the Applicant and Mr Qollaku would assume the remaining debt of 100.000 DM. With the 230.000 DM payment, Mr Xharra was to be released of all his obligations to the Applicant.
14. As required by the new agreement, Islam Kastrati, on behalf of Mr Xharra, paid the 230.000 DM to the Applicant through his son, Agron Kastrati, on 31 March 2002. However, the Applicant refused to return the necessary documentation concerning the contested property to release Mr Xharra from his obligations, claiming that the debt of 100.000 DM remained.
15. Based on the filed contract of sale with the Municipal Court of Prizren under Leg.Nr.496/99 of 15 February 1999, the Applicant transferred title of the contested property into his name in 2007.
16. Mr Xharra initiated a suit against the Applicant for the contested property in the Municipal Court of Prizren which was heard on 29 April 2008.
17. The Municipal Court of Prizren ("Municipal Court") in decision C.Nr.670/07 issued a verdict "to approve in full the lawsuit of" Mr Xharra and declared the contract of sale for the contested property between Mr Xharra, as seller, and the Applicant, as buyer, filed with the Municipal Court of Prizren under Leg.Nr.496/99 of 15 February 1999 as "null and void". The Applicant was ordered to cover all procedural expenditures, legal expenditures for drafting the lawsuit, and temporary measures expenditures.
18. The Municipal Court, *inter alia*, decided that:
 - (1) the contract of sale of immovable property Leg.Nr.469/99 filed with the Municipal Court of Prizren was not a contract regarding a sale, but it was a loan contract for securing debt;
 - (2) the contract of sale was fictive and did not concern a sale, but secured a debt;
 - (3) Mr Xharra was deceived in believing the contract was a mortgage for securing debt, instead of a sales contract for his property; and,
 - (4) all administered evidence concerned the debt and return of debt, and not the sale of the property;
19. The Applicant appealed the Decision of the Municipal Court to the District Court, which decided on 08 June 2009 to reject the Applicant's appeal. The District Court held that the

facts in the record were confirmed and the substantive law applied with no essential violations of civil procedure or court regulations in the Municipal Court decision. Furthermore, as the Applicant confirmed the contested property had not been bought, but was instead placed under a mortgage to secure debt, the District Court held that Mr Xharra had repaid the debt.

20. Applicant filed a Referral to the Constitutional Court on 12 October 2009 to annul and void the District Court decision and remand the matter for retrial to the Municipal Court.

Assessment on the Admissibility of the Referral

21. The Applicant claims Article 31 (Right to a Fair and Impartial Trial) Paragraphs 1 and 2 and Article 54 (Judicial Protection of Rights) of the Kosovo Constitution are the basis for his referral.
22. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo states:
- "In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*
23. Under the Constitution, the Constitutional Court is not to act as a court of appeal, when considering the decisions rendered by lower courts. It is the role of lower 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).
24. 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). The Applicant does not specify how Articles 31 or 54 support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
25. The Applicant claims that his rights were violated by the lower courts' erroneous finding of fact and application of law, without specific reference to how these decisions infringed on his constitutional rights.
26. In the present case the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Ministry of Labour and Social Welfare and the Supreme Court. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
27. In conclusion, the Admissibility requirements are not met by this Referral. He has failed to state and support with evidence the constitutional rights and freedoms that were allegedly violated by the challenged decision.

28. It follows that the Referral is manifestly ill-founded and must be rejected.

FOR THESE REASONS THE COURT DECIDES UNANIMOUSLY:

- I. To REJECT this Referral as inadmissible.
- II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

