



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

Pristina, 25 February 2011
Ref. No.: RK86 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 34/10

Applicant

Bislim Kosumi

vs.

Municipal Court of Podujevo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge.

Applicant

1. The Applicant is Mr. Bislim Kosumi, residing in Podujeva.

Challenged court decisions

2. The Applicant challenges the following decisions:
 - a. Decision C.no.186/86 of the Municipal Court of Podujevo, dated 17.04.1986;
 - b. Decision Ac.no. 444/1986 of the District Court of Prishtina, dated 11.07.1986;
 - c. Decision 05 no. 313-500/87 of the Provincial Secretariat of Economy of Prishtina, dated 08.10.1987;
 - d. Decision A.no. 1234/86 of the Supreme Court of Kosovo, dated 13.02.1987;
 - e. Decision Gz.no. 350/1987 of the Supreme Court of Kosovo, dated 06.10.1987; and
 - f. Decision A.no.1393/1987 of the Supreme Court of Kosovo, dated 15.03.1988.

Subject Matter

3. The Applicant requests “the review of (...) judicial acts and an order-recommendation by this court that based on aforementioned judicial acts my right of ownership is confirmed and that this right is executed by the competent municipal bodies in Podujevo i.e. the cadastral and urban affairs services”. He claims that his right to ownership has been violated.

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Section 54(b) 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 29 January 2010, the Applicant filed a Referral. However, only on 22 March it was registered by the Secretariat of the Court.
6. On 22 March 2010, the Referral was communicated to the Municipal Court of Podujevo which, on 7 September, replied, stating that the decisions that the Applicant refers to are not in the possession of the Court since the Serbs have taken all documents with them after the war.
7. On 21 January 2011, the Review Panel, consisting of Judges Altay Suroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj, considered the Report of the Judge Rapporteur Almiro Rodrigues and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

8. On 3 July 1985, the Applicant purchased a commercial photograph shop in Podujeva.
9. On 11 April 1986, the Applicant filed a suit in the Municipal Court of Podujevo, in order to confirm the contract of purchase of a commercial-photography shop. On 17 April 1986, the Municipal Court of Podujeva declared itself incompetent to deal with the case.
10. The Applicant filed the same suit with the District Court of Pristina, which, on 11 July 1986, decided that the Municipal Geodesic Section in Podujeva should carry out the transfer of the ownership title to the Applicant.

11. The Public Defence Attorney, in the capacity of intervening party and representing the interests of the Municipality of Podujeva, requested the District Court of Pristina to review its decision of 11 July 1986. However, on 30 March 1987, the District Court rejected as inadmissible the request of the Public Defence Attorney. A complaint against this decision to the Supreme Court also failed.

Applicants' allegations

12. The Applicant alleges that his right guaranteed by Article 46 of the Constitution [Protection of Property] has been violated by the aforementioned judicial acts.
13. He further alleges that "these acts are not accepted or executed by the Municipal Court and its bodies in Podujevo" and "the proceedings are terminated but the Judgment is not executed".

Assessment of the admissibility of the Referral

14. In order to be able to adjudicate the Applicants' Referral, the Court needs first to 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.
15. All the abovementioned decisions which allegedly violated the right to ownership of the Applicant are dated in between 17.04.1986 and 15.03.1988
16. Thus, the Applicant's referral is related to a matter that has arisen before 15 January 2009, which is the date of the entry into force of the Law on the Constitutional Court.
17. The referral should have been filed before 15 May 2009 [*In accordance with the combined legal provisions of Article 49, 56 and 58 of the Law on Court*]; however, the referral was filed on 29 January 2010.
18. Therefore, it follows that the Referral is out of time and, thus, incompatible "*ratione temporis*" with the provisions of the Constitution and the Law [*See Resolution on Inadmissibility, Case KI 25/09 Shefqet Haxhiu vs. Workers Organisation "Industria e akumulatorëve" of 21 June 2010 and Blečić v. Croatia, Application no. 59532/00, ECHR Judgment of 29 July 2004.*].
19. Accordingly, the Applicants' Referral is rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible.

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 on the Constitutional Court.

This Decision is effective immediately.

Judge Rapporteur


Almiro Rodrigues

President of the Constitutional Court


Prof. Dr. Enver Hasani

