



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 30 April 2018
Ref. no.: RK 1227/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI21/16

Applicant

Reshat Murati

Constitutional review of Decision of the Basic Court in Mitrovica [Cpp. no. 19/15] of 29 December 2015, in conjunction with the non-implementation of the Decision on Execution [E. No. 2185/98] of the Municipal Court in Mitrovica of 18 December 1998

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Reshat Murati from Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Basic Court in Mitrovica [Cpp. No. 19/15] of 29 December 2015, which was served on him on 5 January 2016.

Subject matter

3. The subject matter of the Referral is the non-implementation of the Decision on Execution [E. No. 2185/98] of the Municipal Court in Mitrovica of 18 December 1998. The Applicant did not specifically state in the Referral what constitutional rights and freedoms have been violated by the non-implementation of this decision.
4. The Applicant also requests the Court not to disclose his identity due to the legal uncertainty of “the system” and the possible threats that he may receive.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 1 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 March 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
8. On 26 May 2016, the Court notified the Applicant about the registration of the Referral. The Applicant was requested to confirm whether he had a legal representative as indicated in the Referral Form, and to provide a signed power of attorney.
9. On 02 June 2016, the Applicant informed the Court that he did not have a legal representative.
10. On 21 August 2017, the Court requested the Applicant to provide additional clarification regarding the status of his case. The Court did not receive any response.
11. On 08 December 2017, the Court again requested the Applicant to provide additional information regarding the status of his case. Again, the Court did not receive any response.
12. On 28 February 2018, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court to reject the Referral.

Summary of facts

13. From the case file, it appears that on 20 February 1998, the Municipal Court in Mitrovica rendered Judgment [P. 787/97], which found that the Municipality of Mitrovica is obliged to pay a certain amount in compensation to the Applicant as a result of unjustified enrichment.
14. On 18 December 1998, the Municipal Court in Mitrovica rendered a Decision on Execution [No. E. No. 2185/98] of the Judgment [P. 787/97] of the Municipal Court in Mitrovica of 20 February 1998.
15. It appears from the case file that, due to the events in 1999, the Applicant's case file was lost from the registry of the Municipal Court in Mitrovica.
16. In 2006, the Applicant submitted a request to the Municipal Court in Mitrovica for the renewal of the case file.
17. On 10 December 2007, the Municipal Court in Mitrovica rendered Decision [E. No. 709/2006] allowing the renewal of the case file in accordance with the case file of the Municipal Court in Mitrovica dating from 1998 [E. No. 2185/98].
18. On an unspecified date, in compliance with Law No. 04/L-139 on Enforcement Procedure of 20 December 2012, the Applicant engaged the services of a registered Private Enforcement Agent to pursue the implementation of the execution decision of the Municipal Court of Mitrovica of 18 December 1998.
19. On 13 July 2015, the Private Enforcement Agent issued a conclusion on the continuation of the enforcement procedure. On 03 August 2015, the Municipality of Mitrovica, in the capacity of debtor, was notified about the conclusion on the continuation of the enforcement procedure.
20. On 11 September 2015, the Private Enforcement Agent issued a Writ of Enforcement [P.no.360/2015] to the Ministry of Finance (Treasury Department) for the implementation of the execution decision of the Municipal Court [No. E. No. 2185/98] of 18 December 1998.
21. On 16 September 2015, the Municipality of Mitrovica sent a letter to the Basic Court of Mitrovica objecting to the continuation of the enforcement procedure and requesting that the enforcement procedure be stopped. The municipality of Mitrovica alleged that there were irregularities in the enforcement procedure.
22. On 04 November 2015, the Private Enforcement Agent sent a letter to the Ministry of Finance (Treasury Department) requesting information as to why the Writ of Enforcement had still not been implemented. This letter did not receive a response.
23. On 02 December 2015, the Applicant submitted a complaint with the Ombudsperson of the Republic of Kosovo (hereinafter: the Ombudsperson) against the Ministry of Finance (Treasury Department) due to failure to

implement the Writ of Enforcement of 11 September 2015. This complaint was registered with the Ombudsperson under number 648/2015.

24. On 12 December 2015, the Municipality of Mitrovica, in the capacity of the debtor, filed an appeal with the Basic Court in Mitrovica against the conclusion of the Private Enforcement Agent of 13 July 2015 on continuation of the enforcement procedure.
25. On 18 December 2015, the Private Enforcement Agent requested the Ministry of Finance (Treasury Department) to postpone the execution of the Writ of Enforcement, which he had filed on 11 September 2015, until further notice from the Private Enforcement Agent. The request states that,

“On 17.12.2015 the private enforcement agent received a request from the Basic Court in Mitrovica that the complete case in the original be sent to the court.”

26. On 29 December 2015, the Basic Court rendered Decision [Cpp. No. 119/15], rejecting as out of time the appeal of the Municipality of Mitrovica against the continuation of the enforcement procedure. The conclusion of the decision states:

“The debtor submits his appeal after the deadline of 7 days, because if there has been any irregularity it should have reacted when he received the conclusion for continuation of the procedure by the private enforcement agent.”

27. On 12 January 2016, the Ombudsperson addressed a letter to the Director of the Treasury Department at the Ministry of Finance informing the Director of the complaint [no. 648/2015] submitted by the Applicant, and requesting information about what actions had been taken, or were scheduled to be taken, to address the Applicant's complaint.
28. On 13 January 2016, the Director of the Treasury department of the Ministry of Finance responded to the Ombudsperson, stating that,

“The private enforcement agent filed a request with the Ministry of Finance (Treasury Department) that the order for execution P. No. 360/15 of 11 September 2011 will not be executed until further notice.”

Applicant's allegations

29. The Applicant alleges that, *“By Article 113, paragraph 7, the guaranteed human rights were violated by the Basic Court in Mitrovica by intentional delays since 2006 and further on, and for this reason I request compensation in the amount of 10,000 euro from the Municipality of Mitrovica.”*
30. The Applicant requests the Court to finally bring to an end the execution of the Municipal Court decision awarding him compensation, which he is owed since the final Decision on Execution [No. E. No. 2185/98] of the Municipal Court in Mitrovica of 18 December 1998.

31. The Applicant requests the Court specifically to “*finalize the historical case E. No. 709/06, as well as P. No. 360/15, of private enforcement agent, as well as to be paid the compensation by the Basic Court in Vushtrri in the amount of about 15,000 euro, compensation from the Municipal Assembly of Mitrovica in the amount of 10,000 euro, compensation from the Treasury Department in Prishtina in the amount of 17,000 euro and compensation from a private enforcement agent in the amount of 3,000 euro.*”

Assessment of the admissibility of the referral

32. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

33. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that,

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

7. 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.”

34. The Court also refers to Article 49 [Deadlines] of the Law, which 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.”

35. The Court understands that the last judicial decision in the Applicant’s case is the decision of the Basic Court of Mitrovica of 29 December 2015, and that the Applicant has submitted his referral within four months of that decision.

36. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides that,

“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.”

37. In addition, the Court refers to Rule 29 [Filing of referrals and replies] of the Rules of Procedure, which provides, *inter alia*, that,

“(2) The referral shall also include:

[...]

(h) the supporting documentation and information.”

38. The Court also refers to Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides that,

“The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous”.

39. The Court considers that, fundamentally, the Applicant requests that the amount in compensation awarded to him in 1998 be paid.
40. In this respect the Court notes that the Applicant engaged the services of a Private Enforcement Agent who issued a Writ of Enforcement to the Ministry of Finance (Treasury Department). On 18 December 2015, this Private Enforcement Agent suspended the Writ of Enforcement pending the judicial proceedings before the Basic Court of Mitrovica. Those judicial proceedings concluded on 29 December 2015.
41. However, the Applicant has not provided any information as to what has happened with the Writ of Enforcement following the conclusion of the proceedings at the Basic Court. Nor has he indicated what further steps he, or his Private Enforcement Agent, have taken to conclude the enforcement proceedings.
42. In particular, the Court recalls that on 21 August 2017, and again on 08 December 2017, the Applicant was requested to provide additional clarification and updated information regarding the status of his case.
43. The Court notes that the Applicant has not responded to these requests.
44. In these circumstances, the Court concludes that the present Referral is incomplete and is not clearly stated, despite requests by the Court to the Applicant to supplement and clarify the Referral. Therefore, the Referral cannot be taken for review, as it does not meet any of the procedural requirements stipulated by the Constitution, the Law and the Rules of Procedure.
45. In conclusion, the Court finds that the Referral is to be summarily rejected in accordance with Rule 32 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116 of the Constitution and Rule 32 (5) of the Rules of Procedure, on 28 February 2018, unanimously:

DECIDES

- I. TO REJECT the Referral;
- 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

