



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

Pristina, 15 March 2012
Ref. No.: RK207/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 20/11 and KI 96/11

Applicant
Kushtrim Kqiku

**Constitutional Review of the Judgment of the Municipal Court in Gjilan,
P.nr.550/08, dated 9 July 2009,**

and

**Judgment of the District Court in Gjilan, AP.nr. 182/2009, dated 29 April
2010.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Kushtrim Kqiku residing in Gjilan.

Challenged decisions

2. The Applicant explicitly challenges the Judgment of the Municipal Court in Gjilan, P. nr. 550/08, of 9 July 2009, which was served on the Applicant on 10 July 2009.
3. Further, the Applicant makes also reference in the Referral to Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010, which was served on the Applicant on 26 May 2010.

Subject matter

4. The Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) in connection with Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: “ECHR”).

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the “Law”) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the court

6. On 18 February 2011, the Applicant’s grandfather, Mr. Mahmut Kqiku, filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”), on behalf of his grandson, Mr. Kushtrim Kqiku, which is registered with Case number KI-20/11.
7. On 2 March 2011, the President, by Decision No.GJR. KI20/11, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Decision No. KI20/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Iliriana Islami.
8. On 30 June 2011, the Applicant (Kushtrim Kqiku), filed a Referral with the Court regarding the same subject matter and directed against the same public authorities in the Republic of Kosovo, which is registered under Case number KI 96/11.

9. On 1 July 2011, the Court asked the Applicant (Kushtrim Kqiku) whether he gives authorization to his grandfather to file a Referral on his behalf.
10. On 7 July 2011, the Applicant replied to the Court's request by adding that he authorizes his grandfather *post festum*, but at the same time requested from the Court that from the said moment onwards any form of communication should be addressed to him and not to his grandfather Mahmut Kqiku.
11. On 5 September 2011, the Referral was communicated to the Municipal Court in Gjilan, Ministry of Justice (hereinafter: the "Ministry"), and European Union Rule of Law Mission in Kosovo (hereinafter: "EULEX").
12. On 27 October 2011, the President, by Decision KI20/11, KI96/11, ordered joiner of the two Referrals pursuant to Rule 37 (1) of the Rules of Procedure since they treat the same legal matters and are directed against the same public authorities in the Republic of Kosovo. On the same date, the Court notified the Applicant (Kushtrim Kqiku) about the joinder of the Referrals KI-20/11 and KI-96/11.
13. On 1 December 2011, the Applicant notified this Court that he did not object to the decision to join the Referrals.
14. On 24 January 2012, the Court requested the Municipal Court in Gjilan to submit to this Court the receipt showing the date on which the Applicant was served with the Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010.
15. On 8 February 2012, the Municipal Court in Gjilan replied to this Court and submitted the receipt showing the date on which the Applicant was served with the Judgment of the District Court in Gjilan, AP.nr.182/2009, of 29 April 2010.
16. On 7 March 2012, 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

17. On 15 November 2007, the Applicant entered into a sales contract with a third person (hereinafter: the "seller") for purchasing a vehicle.
18. On 9 April 2008, the Applicant filed a criminal report with the Public Prosecutor in Gjilan against the seller for having committed fraud.

19. On 30 May 2008, the Public Prosecutor in Gjilan filed an indictment against the seller with the Municipal Court in Gjilan, whereby the seller was alleged of having committed the criminal act of fraud under Article 261 (1) of the Provisional Criminal Code of Kosovo (hereinafter: "PCCK"), (PP. no. 684/2008).
20. On 11 August 2008, the Applicant filed a request with the Municipal Court in Gjilan to speed up the procedure (P. no. 550/08).
21. On 9 July 2009, the Municipal Court in Gjilan found the seller guilty of having committed fraud pursuant to Article 261 (1) of PCCK and held that the seller is obliged to pay the amount mentioned in the purchase contract (Judgment P. no. 550/08). The seller complained to the District Court in Gjilan against this Judgment.
22. On 29 April 2010, the District Court in Gjilan found the complaint of the seller as ungrounded and upheld the judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 (Judgment AP. no. 182/09).
23. On 29 April 2010, the Judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 became final and binding.
24. As far as the execution proceedings with respect to the amount mentioned in the purchase contract and the proceedings for extradition, the facts are as follows:

a) Facts regarding the execution procedure

25. On 4 February 2009, the Applicant entered a judicial agreement with the seller, whereby they agreed that the seller would pay back the Applicant the amount mentioned in the purchase contract (E. no. 236/2008).
26. On 16 March 2011, the Applicant filed a request with the Municipal Court in Gjilan to expedite the executive procedure in relation to case E. no. 236/2008 of 4 February 2009.

b) Facts regarding the extradition

27. In the meantime, the seller fled from Kosovo and was not available for the execution of Judgments of the Municipal and District Court in Gjilan.
28. On 5 March 2011, the Applicant filed a request with the Municipal Court in Gjilan whereby he proposed them to make a formal request to the Ministry of Justice respectively to the International Legal Cooperation Division to initiate procedure

for the transfer of the seller to the Republic of Kosovo in order to execute the judgment of the Municipal Court in Gjilan (P. no. 550/08 of 9 July 2009) which became final and binding with the Judgment of the District Court in Gjilan (AP. no. 182/09 of 29 April 2010).

29. On 4 June 2011, the Applicant filed a request with the Eulex Kosovo Police Component, whereby he requested them to initiate the procedure of transferring the seller to the Republic of Kosovo pursuant to Article 507 (3) of PCPCK.

30. On 28 June 2011, the Applicant filed a request with the Municipal Court in Gjilan, whereby he requested them to initiate the procedure of transferring the seller to the Republic of Kosovo pursuant to Article 507 (3) of PCPCK.

Applicant's allegations

31. The Applicant alleges that the judicial agreement E. no. 236/08 as far as the substantive part is concerned i.e. the compensation of the injured party has stagnated, even though the matter is active as of 28 March 2008.

32. Further, the Applicant alleges that the final judgment dated 29 April 2010 was not executed neither from the criminal nor from the civil point of view and as such remains a worthless document which constitutes a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6.1 of ECHR.

33. From the submitted documents the Applicant asks the Court to:

- a) ascertain that there is a violation of Article 31 of the Constitution in connection with Article 6.1 of ECHR;
- b) oblige the Municipal Court in Gjilan, Ministry of Justice and Eulex to initiate proceedings and make efforts to execute the final judgment of the Municipal Court in Gjilan, i.e. to extradite the seller; and
- c) the Municipal Court in Gjilan, the Ministry of Justice and Eulex should report to the Court, and to the Applicant in periods which the Court deems reasonable, as to the progress made in this regard.

Assessment of the admissibility of the Referral

34. The Court notes that the Applicants complain about three issues:

- a) the final judgment of the Municipal Court in Gjilan, P. no. 550/08, of 9 July 2009 was not executed and as such constitutes a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in connection with Article 6.1 of ECHR;
- b) the judicial agreement E. no. 236/08 concerning compensation to the Applicant has not been executed since 28 March 2008; and
- c) the authorities in Kosovo, i.e. the Municipal Court in Gjilan, the Ministry of Justice and EULEX, have not initiated proceedings to extradite the seller.

35. In this respect, in order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

36. As to the District Court Judgment, AP.nr.182/2009, of 29 April 2010, , the Court notes that the Applicant was served with the District Court Judgment, AP.nr.182/2009, of 29 April 2010, on 26 May 2010.

37. The Constitutional Court also notes that the Applicant filed the Referral on 30 June 2011.

38. In these circumstances, the Referral is out of time pursuant to Article 49 of the Law.

39. It follows that the Referral is Inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 7 March 2012, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. 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;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalovič

Prof. Dr. Enver Hasani

