



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

Pristine, 12 December 2011
Ref. No.: RK175/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 92/11

Applicant
Muhamet Bucaliu

Constitutional Review of the Notification of the State Prosecutor, KMLC. no. 37/11, dated 2 June 2011.

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. Muhamet Bucaliu residing in Ferizaj, who submitted a first Application (Case No. KI 20/10) to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 4 March 2010. The Case was rejected as inadmissible on 15 October 2010.

Challenged decision

2. With the present Application, the Applicant challenges Notification KMLC. no. 37/11 of the State Prosecutor, dated 2 June 2011, by which the latter rejected the Applicant's request, dated 13 May 2011, to initiate a request for protection of legality regarding Resolution Ac. No. 116/2011 of the District Court in Pristina of 19 April 2011. The Notification was served on the Applicant on 2 June 2011.

Subject matter

3. The present Case is a follow-up of Case No. KI 20/10. The Applicant complains now that the Municipal Court in Ferizaj, by Resolution 4/2008 of 13 December 2010, sold his immovable property to the creditor despite his objections and that the District Court in Pristina, by Resolution Ac. No. 116/2011 of 19 April 2011 refused his appeal. Moreover, the Applicant complains that the State prosecutor, with Memo KMLC, No. 37/2011, informed him that there was no legal ground to initiate the procedure for the protection of legality.
4. The Applicant alleges, that Article 24 (1) [Equality before the Law], Article 31 (1) [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.
5. The Applicant also requests the Court to decide on his request for interim measures against the execution procedure in respect to his property in order to avoid any risk of irreparable damage.

Legal basis

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rules 54, 55 and 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

7. As to the Applicant's previous Case KI. No. 20/10, on 13 July 2010, the Constitutional Court found the Referral inadmissible on the ground that the Applicant had failed to show that he had exhausted all legal remedies as provided by applicable law, since he could have complained to the Municipal Court of Ferizaj and the District Court of Pristina that he had not received Decision E.No. 04/08 of 11 January 2008 of the Municipal Court of Ferizaj and that the same Court, in its execution decision, had gone outside the limitations of the claim. Instead, the Applicant only submitted a claim against the evaluation of the value of the property.
8. On 7 July 2011, the Applicant submitted a new Referral to this Court.
9. On 17 August 2011, the President, by Order No. GJR. 92/11, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Order No. KSH. 92/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Iliriana Islami.
10. On 3 November 2011, the Court communicated the Referral to the State Prosecutor. No reply has been received so far.

11. On 25 November 2011, 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

12. From the documents submitted by the Applicant in connection with the new Application, it appears that, on 13 December 2010, the Municipal Court in Ferizaj held the third session of the public sale of the Applicant's immovable property (Cadastral Plot No.1071 in Ferizaj), which, under a mortgage agreement (No. 11715/H, registered by the Municipal Cadastral Office of Ferizaj under Protocol No. 25-72217092-00584) with the Raiffeisen Bank as the creditor, had been deposited as a pledge for a credit given to the debtor "Nera Impex" in Ferizaj. According to the Applicant, no buyer had been notified.
13. On the same day, the Municipal Court in Ferizaj, by Resolution E. 4/08, sold the property to the Raiffeisen Bank, as the highest bidder, despite the objections of the Applicant and his representative against these execution proceedings.
14. On 22 December 2010, the Applicant complained against the decision of the Municipal Court to the District Court in Pristina, arguing that the court of first instance had wrongfully assessed the factual situation.
15. On 19 April 2011, the District Court of Pristina, by Decision Ac. No. 116/2011, rejected the Applicant's claim as unfounded and confirmed Resolution E. No. 04/2008 of 13 December 2010 of the municipal Court in Ferizaj.
16. On 13 May 2011, the Applicant submitted a request for protection of legality to the State Prosecutor against both the decisions of the Municipal Court of Ferizaj and of the District Court of Pristina.
17. On 2 June 2011, the State Prosecutor found that there was no legal basis for the request (Notification KMLC No. 37/11).

Applicant's allegations

18. The Applicant alleges that:
 - a. the provisions of Articles 24.1, 31.1 and 54 of the Constitution of the Republic of Kosovo have been violated.
 - b. article 47.2 of the Law on Execution Procedure is violated, because the Decision of the Municipal Court E. No. 4/08, dated 11.01.2008, was never delivered to him personally, hence, he could not complain against this decision.
 - c. the legal provisions addressed in the request to the State Prosecutor, dated 13 May 2011, as well as those mentioned in the basic appeal and supplementing appeals have been violated.

Assessment of the admissibility of the Referral

19. In his new submissions, the Applicant alleges that his rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution have been violated by the Municipal Court in Ferizaj, the District Court in Pristina and the State Prosecutor.

20. The Applicant's complaint that he has never received Decision E. No. 4/08 of the Municipal Court of Ferizaj of 11 January 2008 was already rejected by this Court in its Resolution on Inadmissibility in Case No. KI. 20/10 and will, therefore, not be dealt with here, pursuant to Rule 36(3) (e) of the Rules.
21. The Court first observes that, in order to be able to adjudicate the Applicant's new complaint, it is necessary to first examine whether he has fulfilled all admissibility requirements, laid down in the Constitution as further specified in the Law and the Rules of Procedure.
22. In respect to the present Referral, the Court notes that an Applicant can not complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution. This is true for the main proceedings as well as for the execution proceedings after the actual trial is over. In this respect the Court refers to ECtHR Judgment of 19 March 1997, *Hornsby v. Greece* (Reports 1997, 495), where the ECtHR stated that "Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6."
23. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering the decisions taken by the ordinary courts. It is the role of ordinary 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 Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *mutatis mutandis*, Report of the Eur. Commission on Human Rights in the case *Edwards v. United Kingdom*, Application No. 13071/87 adopted on 10 July 1991).
25. As to the present Referral, the Court considers that the District Court in Pristina, in its Resolution Ac. No. 116/11 of 19 April 2011, carefully considered the way in which the Municipal Court in Ferizaj handled the public sale of the mortgaged property of the Applicant in accordance with the mortgage agreement, registered at the Directorate of Cadastre in Ferizaj. Also the State Prosecutor found no legal grounds to initiate a request for the protection of legality.
26. The Applicant has, therefore, not shown that Resolution Ac. No. 116/11 of the District Court in Pristina was 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 and *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application No. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.
27. In these circumstances, the Court concludes that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
28. Accordingly, the Applicant's Referral must be rejected as inadmissible.

Assessment of the request for an interim measure

29. As to the Applicant's request to the Court for interim measures, the Court refers to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure,

stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c), Rule 54 (1) and Rule 56 (2) of the Rules of Procedure, on 25 November 2011, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

