



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

Pristine, 02 November 2012
No. ref.: RK321/12

RESOLUTION ON INADMISSABILITY

in

Case No. KI12/12

Reshat Murati

**Constitutional review of the Resolution of the Municipal Court in Mitrovica
E. No. 709/2006, of 10 December 2007**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Reshat Murati residing in Mitrovica.

Challenged decision

2. The challenged decisions of the public body are: Resolution on execution of the Municipal Court in Mitrovica E. No. 2185/98 dated 14 August 1998, and decision E. No. 709/2006 of 10 December 2007, by which the Municipal Court in Mitrovica allowed the renewal of the case file in accordance with the earlier case file E. No. 2185, whilst concerning the subjected resolution the Applicant did not specify the date when he received it.

Subject matter

3. The subject matter of the case submitted on 15 February 2012 to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") is constitutional review of the Resolution E. No. 2185/98 of 14 August 1998, and Resolution E. No. 709/2006 of 10 December 2007, concerning non-execution of the Resolution according to which the Municipality of Mitrovica, in capacity of debtor, was obliged to pay to the creditor, Mr. Reshat Murati, an amount of 25.220,48 dinars of that time, as well as amount of 5.000,00 dinars under the threat of forced execution.

Alleged violations of rights guaranteed by the Constitution

4. The Applicant did not explicitly specify in his Referral any of the violated rights guaranteed by the Constitution.

Legal basis

5. Article 113.7 of the Constitution, Art. 22 and 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, 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

6. On 28 February the Applicant submitted a Referral to the Court and was registered in Court under number KI 12/12.
7. On 7 February 2012, the President by Decision No. GJ. R. KI 12/12, appointed Judge Ivan Ćukalović as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of judges: Almiro Rodrigues (presiding), Snezhana Botusharova and Kadri Kryeziu, as panel members.
8. On 30 March 2012, the Court informed the Municipal Court in Mitrovica on registration of the Referral and requested from the Municipal Court in Mitrovica to notify the Court on the status of the case with number E. br. 2185/98.
9. On 11 April 2012, the Municipal Court in Mitrovica, submitted to the Court the response regarding the Referral, stating that due to the fact that the case file was in the courthouse in the northern part of Mitrovica, where they do not have access, the Municipal Court in Mitrovica is not able to provide any information on the stage of execution of the case number E. No. 2185/98.
10. The Applicant, on 10 May 2012, through email informed the Constitutional Court that, in fact, before the Court he was not being represented by Mr. Adem Vokshi, and for that reason he did not attach the power of attorney to the Referral.

11. On 19 September 2012, deliberating on this case, the Review Panel proposed to the full Court inadmissibility of the Referral.

Summary of facts

12. Mr. Reshat Murati, through his authorized representative, lawyer Dejana Milić from Mitrovica, on 4 December 1997, submitted to the Municipal Court in Mitrovica the proposal for execution, requesting from this court to allow the execution and oblige the Municipality of Mitrovica, in capacity of debtor, to pay to him the amount of money indicated in paragraph 3 of this report.
13. On 14 August 1998, the Municipal Court in Mitrovica rendered a decision E. 2158/98 on execution of the Judgment P. 787/97 issued on 20 February 1998, by the Municipal Court in Mitrovica and based to which the Municipality of Mitrovica was obliged to pay to the Applicant a compensation of 25.220,48 dinars of that time.
14. According to the Applicant's allegations this Resolution has never been executed.
15. To the Applicant's request the Municipal Court in Mitrovica, on 10 December 2007, rendered e Resolution, E. No. 709/2006, to renew the case file E. No. 2158/98.
16. On 14 May 2010, the Applicant requested from the EULEX Judges Team in the District Court in Mitrovica to accelerate the execution of Resolution number E. No. 706/06of the Municipal Court in Mitrovica.
17. The EULEX Judges Team of the District Court in Mitrovica, on 3 August 2010, responded to the request of the Applicant stating that: *„Because there is no new or unsolved civil case, which deals with the property before the domestic judiciary, the EULEX Judges do not have competencies in this special case.“*

Applicant's allegations

18. The Applicant alleges that his rights were violated due to non-execution of this Resolution, without clearly specifying any of the violated constitutional rights, and requesting from the Constitutional Court execution of the challenged decision.

Assessment of admissibility of the Referral

19. In order to be able to adjudicate the Referral of the Applicant, the Court has to assess beforehand whether the Applicant has met the admissibility requirements laid down in the Constitution, the Law on Constitutional Court and the Rules of Procedure of the Court. In this respect, the Court refers to Article 113.7 of the Constitution which provides as follows:

*“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.”*

20. The Court also refers to the Rule 36 of the Rules of Procedure of the Court, which in paragraph 3 provides:

“A Referral may also be deemed inadmissible in any of the following cases:

*h) The Referral is incompatible *ratione temporis* with the Constitution“.*

21. After analyzing the documentation the Applicant has submitted with the case file, it may be concluded that the resolutions subject to constitutional review are: the Resolution on execution of the Municipal Court in Mitrovica, E. No. 2185/98 of 14 August 1998, as well as the Resolution of the Municipal Court in Mitrovica E. No. 709/2006 of 10 December 2007, by which is allowed the renewal of the case file.
22. Yet, having in mind the legal deadlines, the Court notes that the Applicant has requested constitutional review of the acts of public bodies, dating from the period before the Constitution of the Republic of Kosovo entered into force (15 June 2008). Therefore, the Constitutional Court cannot review the constitutionality of legal acts which are assumed to have violated certain right guaranteed by the Constitution, since at that time those rights were not defined nor guaranteed by the Constitution, due to the fact that even the Constitution itself did not exist at that time. Hence, the Referral is incompatible *ratione temporis* with the Constitution (see *Blečić vs Croatia*, Appl.No. 59532/00, Judgment of ECtHR, of 29 July 2004, by which the ECtHR declared the request inadmissible because the provisions of the European Convention on Human Rights do not oblige the signatory countries with regard to any act which was passed or any legal situation which ceased to exist before the Convention entered into force).
23. The European Court gave the same reasoning even when case **Jasioniene vs Lithuania** was declared inadmissible (see, *mutatis mutandis*, *Jasioniene vs Lithuania*, Appl. No. 415101/98, Judgment of ECtHR of 6 March and 9 June 2003).
24. In these circumstances the Court holds that the Referral is admissible, since it is *ratione temporis* incompatible with the Constitution:

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Rule 36.3 item h) of the Rules of Procedure, in its deliberation held on 20 September 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. dr. Enver Hasani