



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 5 June 2017
Ref. No.:RK 1085/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI148/16

Applicant

Mitat Qovanaj

**Constitutional Review of the Decision CP. No. 1976/13 of the Basic Court
in Prizren of 22 May 2014**

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 Mitat Qovanaj with residence in Prizren (hereinafter: the Applicant), represented by Egzon Qovanaj.

Challenged decision

2. The Applicant challenges the Decision, CP. No. 1976/13 of 22 May 2014 of the Basic Court in Prizren (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged decision which has allegedly violated the Applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Articles 6 and 13 of the European Convention on Human Rights (hereinafter: ECHR), Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 [Right to Property] of the Protocol No. 1 to the ECHR and as well Article 54 of the Constitution.

Legal basis

4. The Referral is based on Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 19 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 December 2016, the Applicant submitted additional documents to the Court.
7. On 16 January 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Surroy (presiding), Ivan Čukalović and Bekim Sejdiu.
8. On 6 March 2017, the Court notified the Applicant of the registration of the Referral and requested from the Applicant the information whether he has filed an Appeal against the Decision, CP. No. 1976/13 of 29 August 2014. A copy of the Referral was also sent to the Basic Court in Prizren.
9. On 16 March 2017, the Applicant submitted a letter declaring that he did not file an appeal against Decision, CP.No. 1976/13 of 29 August 2014.
10. On 3 May 2017, 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

11. On an unspecified date, the Applicant authorized by his father filed a claim before the District Court in Prizren requesting the confirmation of ownership and compensation as a result of expropriation of the property in Vërmica region.
12. On 10 June 1985, the District Court in Prizren (Judgment Cp. No. 292/83) confirmed the ownership of the expropriated plots and obliged the Federal Secretariat for Hydro-economy “Drini i Bardhë” (hereinafter: the Respondent) to pay to the Applicant a certain amount of money as a compensation. Against this Decision, the Respondent filed an appeal with the Supreme Court.
13. On 24 December 1985, the Supreme Court of Kosovo rejected the appeal of the Respondent as ungrounded, and upheld the aforementioned Judgment of the District Court of 10 June 1985.
14. On 19 September 2013, the Applicant submitted a request for execution of the Judgment of the District Court in Prizren, C. No. 292/83 of 10 June 1985.
15. On 24 March 2014, the Basic Court in Prizren (Decision, C. No. 1976/13) approved the Applicant’s request for the execution of the Judgment of the District Court in Prizren of 10 June 1985.
16. On 8 April 2014, the Municipality of Prizren filed an objection against the aforementioned Decision of the Basic Court due to essential violations of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law. Moreover, the Municipality of Prizren reasoned its objection by stating that the request for execution was submitted after the time limit prescribed by the law. The Applicant did not submit a response to the objection of the Municipality of Prizren.
17. On 22 May 2014, the Basic Court (Decision Cp. No. 1976/13): I. Approved the objection of the Municipality of Prizren as grounded; II. Rejected the Applicant’s request for the execution of Judgment of 10 June 1985 as ungrounded; and III. Repealed the Decision Cp. No 1976/13 of 24 March 2014 and annulled all actions concerning the execution procedure.
18. The Basic Court based its Decision by referring to the provisions of the Laws in force on Execution Procedure and on Obligational Relationship.
19. The Basic Court found that: “[...] in relation to the prescription of requests in the enforcement procedure, and in Article 361, paragraph 1, of the Law on Obligational Relationships [hereinafter: LOR] which refers to requests confirmed by the Court or other competent authorities, the following is provided: “All claims determined by a final court ruling or by a ruling by another relevant authority or through settlement before the court or another relevant authority, shall become statute-barred after ten (10) years, including those for which a shorter period is stipulated by the statute of limitations”.

20. Thus, the Basic Court concluded that the Applicant submitted his proposal for the enforcement of the Judgment of the District Court of 10 June 1985 after the expiration time limit foreseen by Article 361, paragraph 1 of the LOR.
21. On 3 June 2014, the Applicant filed an appeal against the aforementioned Decision of the Basic Court of 22 May 2014.
22. On 29 August 2014, the Basic Court (Decision Cp. No. 1976/13) dismissed the Applicant's appeal because the Applicant failed to pay the required court fee.
23. The aforementioned Decision of the Basic Court of 29 August 2014 explicitly advised that: *"Through this Court, an Appeal against this Decision may be filed by the dissatisfied party with the Court of Appeals, within the time limit of 7 (seven) days, starting from the date of its receipt."*
24. Based on the statement of the Applicant submitted to the Court on 16 March 2017, the Applicant did not file an appeal against the Decision of the Basic Court, Cp. No. 1976/13 dated 29 August 2014.

Applicant's allegations

25. The Applicant alleges that there has been a violation of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Articles 6 and 13 of the ECHR, Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 [Right to Property] of the Protocol No. 1 to the ECHR and as well Article 54 of the Constitution. The Applicant alleges that the prolongation and non-enforcement of the Judgment of the District Court in Prizren, of 10 June 1985, has violated his right to a fair trial.
26. With regard to the Decision of the Basic Court, Cp. No. 1978/13 of 22 May 2014, the Applicant claims that in *"In accordance with the practice of ECHR, cases of non-enforcement of final Decisions res judicata present a continuous violation, due to the reason that it is an earned right and it should not remain only in paper, or partial applied, but should be realized in practice as well (see: Judgment KI 129/11 of the Constitutional Court, quoted parts from the Court of Strasburg)."*
27. Further the Applicant requests to *"[...] confirm my constitutional right [Article 46: Protection of Property], and order the Municipal Assembly in Prizren – Directorate for Legal – Property Matters, to enforce Judgment Cp. No. 292/83 of 10 June 1985, namely the compensation of the expropriated land, in the amount of 84.999,10 EUR, with a legal fee of 7, 5%, which shall be calculated starting from the date of the deposit on 11 November 1980, until the final payment."*
28. Moreover the Applicant request: *"Finally, I request from the Constitutional Court the review of the Referral pursuant to the Law on Constitutional Court, even though the Referral has not been filed within the time limit of 4 months [...]."*

Admissibility of the Referral

29. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.

30. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”

31. The Court also refers to Article 49 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law.”

32. Furthermore, the Court takes into account Rule 36 (1) (c) of the Rules of Procedure, which states that:

(1) The Court may consider a referral if:

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

[...]

33. The Court notes that Applicant challenges the Decision of the Basic Court, CP. No. 1976/ 13 dated 22 May 2014. The last Decision concerning the Applicant’s case is Decision, CP. No. 1976/13 of 29 August 2014 of the Basic Court, which dismissed the Applicant’s appeal because the Applicant had failed to pay the required court fee. The Applicant filed his Referral before the Court on 19 December 2016.

34. With regard to the issue of the time limit of filing the Referral before the Court, the Applicant claims that *“In accordance with the practice of ECHR, cases of non-enforcement of final Decisions res judicata present a continuous violation, due to the reason that it is an earned right and it should not remain only in paper, or partial applied, but should be realized in practice as well.”*

35. With regard to the aforementioned Applicant’s allegation, the Court refers to the reasoning of the Basic Court, which in its Decision concluded that Applicant’s request for the execution of the Judgment of the District Court of 10 June 1985 was time barred.

36. Moreover, the Court notes that the challenged Decision of the Basic Court of 22 May 2014 explicitly advised the Applicant to file an appeal with the Court of

Appeals. It appears from the subsequent Basic Court's decision of 29 August 2014 that the Applicant failed to pay the required court fee for his appeal.

37. Subsequently, on 29 August 2014, the Basic Court stated that against this Decision, the Applicant had the right to file an appeal. Thus, the Applicant had the opportunity to file an appeal against the Decision of the Basic Court of 29 August 2014, but did not do that. Therefore, the Applicant's failure to file an appeal with the Court of Appeals, shall be understood as a waiver of the right to further proceedings, which could address the substance of his claims.
38. In conclusion, the Court referring to the fact that the challenged Decision was rendered on 22 May 2014 and the Applicant submitted his Referral before the Court on 19 December 2016 considers that the Applicant's Referral was not submitted within the legal time limit provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
39. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases, raising issues under the Constitution, are dealt within a reasonable time and that the past decisions are not continually open to challenge (See case *O'Loughlin and others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).
40. Accordingly, the Court finds that the Applicant's referral is inadmissible for being out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 3 May 2017, by majority

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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;

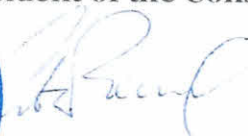
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Veton Rama-Hajrizi