



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

Pristine, on 26 June 2012
Ref .No.:RK257/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 19/12

Applicant

Naser Peci, lawyer representing the late Murat Plakolli

**Request for constitutional review of the Resolution of the District Court in
Prishtina AC.nr. 1496/2011 of 24 January 2012**

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

The Applicant

1. The Applicant is Mr. Naser Peci, lawyer from Prishtina who is representing temporarily the late Murat Plakolli.

Challenged decision

2. The challenged decision of a public authority is the Resolution of District Court in Prishtina AC. no. 1496/2011 of 24 January 2012, which has been served on the Applicant on 22 February 2012.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the review of the constitutionality of the Resolution of the District Court in Prishtina AC. no. 1496/2011 of 24 January 2012, regarding the immovable property placed in mortgage by the late Murat Plakolli.
4. The Applicant requests the Constitutional Court to not disclose his identity.

Alleged violation of the constitutionally guaranteed rights

5. The Applicant alleges that the Resolution of the District Court in Prishtina AC. no. 1496/2011 dated 24 January 2012, has violated his rights guaranteed by Article 46 [Protection of property] of the Constitution.

Legal basis

6. 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 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules").

Proceedings before the Court

7. On 28 February 2012, the Applicant filed the Referral with the Court, which was registered under no. KI 19/12.
8. On 29 February 2012, by Decision GJR. KI 19/12, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur. On the same day, the President of the Court, by Decision KSH. KI 19/12 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), 2. Dr. Gjyljeta Mushkolaj (member) and 3. Dr. Iliriana Islami (member).
9. On 13 March 2012, the Court requested from the temporary representative of the deceased to submit to the Court an authorization from the lawful inheritors of the deceased, Murat Plakolli, which would prove that he is authorized to represent this issue before this Court.
10. On 19 March 2012, the Court notified the District Court in Prishtina on the registration of Referral.

11. On 20 March 2012, the temporary representative replied to the Court's request and stated that he was assigned by Resolution of the Municipal Court in Prishtina E.no 1168/10 of 19 July 2011. The Court based its decision to assign him on Article 36.4 of the Law on Execution Procedure (LEP), Article 82 of the Law on Contested Procedure (LCP). The representative of the deceased claims that this Law is applied also in other issues that are not regulated by (LEP), among other things, the reply of the representative reads: *based on the Court's Resolution I am obliged to represent the late Murat Plakolli in the matter, until the heirs of the deceased in person or their authorized representative by power of attorney do appear before the Court, respectively until the guardianship authority appoints a guardian at the Court's request.*
12. On 20 June 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the full Court on the Inadmissibility of the Referral.

Summary of the facts

13. On 21 July 2011, the Municipal Court in Prishtina based on the Conclusion on Sale no. E. no. 1168/10, through the second public auction, set for sale the immovable property of the deceased, (in the capacity of the debtor-warrantor) registered in the possession list UL-71914059 as cadastral plot no. 1994-0, house and yard, in the place called "Kolonija e re" CZ Prishtina, with area of 224 m2.
14. On 21 July 2011, the Municipal Court in Prishtina rendered Resolution E.nr.1168/10 whereby it approved plaintiff's proposal (Pro Credit Bank), for appointment of a temporary representative to represent Mr. Murat Plakolli, as the said person had passed away on 2 April 2010. The Court subsequently appointed Mr. Naser Peci as a temporary representative, until the heirs of the deceased personally or his authorized representative would appear before the Court, so that the said representative would have all the rights and obligations of a legal representative. The Court did not allow the right to appeal this Resolution.
15. On 8 August 2011 the temporary representative, Mr. Naser Peci, filed a submission with the Municipal Court in Prishtina requesting the Municipal Court to re-assess Resolution E.nr.1168/10 of 21 July 2011, on the appointment of the temporary representative in this legal matter, due to the fact that, as the temporary representative states in his submission: "the provision of Article 36 paragraph 4 of LEP stipulates that a temporary representative is appointed for a debtor only in case that he does not have an authorized representative or "legal representative", and the line of persons to be appointed temporary representative is specified, that is from the line of persons who are in possession of the property.
16. On 12 September 2011 the Municipal Court in Prishtina based on Conclusion E.nr.1168/10 on Sale of Immovable Property no. UL-71914059-04949, Property of the debtor warrantor, Murat Plakolli (mortgager), determined that, as a buyer, the creditor Pro Credit Bank was the most suitable bidder that offered the highest price for buying the said immovable property.

17. On 6 October 2011, the Municipal Court in Prishtina, rendered Resolution E.no.1168/10 whereby it ascertained that the immovable property mortgaged by the deceased was sold to the creditor Pro Credit Bank, as the only bidder, the most suitable and who offered the highest price for buying the immovable property. The debtor warrantor was ordered to hand over in possession the mortgaged property to the creditor Pro Credit Bank within 7 days.
18. On 5 December 2011, the temporary representative of the deceased (debtor warrantor), together with the other debtor Mr. Afrim Kalaja, representative of N.T.P. "Ideal" from Prishtina submitted an appeal with the District Court in Prishtina against the Resolution of the Municipal Court E. No. 1168/10 of 6 October 2011 and requested the annulment of this decision due to erroneous application of the provisions of execution procedure.
19. On 24 January 2012 District Court in Prishtina rendered Resolution Ac.no.1496/2011 whereby it rejected as unfounded the appeal filed by the temporary representative of the Applicant and upheld the Resolution of the Municipal Court in Prishtina E.no.1168/2010 of 6 October 2011. This court ascertained that it did not find a violation of the execution procedure as it was alleged by the debtor, reasoning that the final price of the subject of execution following two unsuccessful sales has been determined within the meaning of Article 203.5 of the Law on executive procedure.
20. Furthermore, the Applicant did not provide any supporting evidence or information that would justify his request for non-disclosure of identity.

Applicant's allegation

21. The Applicant alleges that the Resolution of the District Court in Prishtina AC.no. 1496/2011 of 24 January 2012 has violated his right as guaranteed by Article 46 [Protection of property] of the Constitution of the Republic of Kosovo.

Assessment of the admissibility of Referral

22. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
23. In this regard, the Court refers to Article 113 of the Constitution which provides:

"Article 113 [Jurisdiction and Authorized Parties]

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

24. The Court notes that the Applicant, Nr, Naser Peci, in this Referral is, in fact, the temporary representative of the late Murat Plakolli, debtor warrantor of the mortgaged property. The temporary representative was appointed by the Decision of the

Municipal Court in Prishtina E.no.1168/10 on 21 July 2011, to represent the deceased (mortgager) temporarily in the legal matter initiated by the creditor "Pro Credit Bank".

25. In his response to Court's letter of 13 March 2012, the Applicant failed to answer whether the heirs of Murat Plakolli or their authorized representative had appeared before the Municipal Court of Prishtina in defense of the claim to his immovable property. Therefore, it appears that the temporary representative of the Applicant, the late Murat Plakolli, has not proven that he enjoys the right to legal representation on this issue, since the procedure of determining the inheritance is regulated by a special law. The Applicant has the burden of proving that he or she is an authorized party. In this context the Court, therefore, considers that the said person cannot represent the estate of the deceased, Mr. Murat Plakolli, since he has not furnished the Court with an authorization from the line of the legal heirs of the late Murat Plakolli or proved that the legal heirs did not appear in court on behalf of the estate of Murat Plakolli.
26. For the foregoing reasons, the Court concludes that the filing of the Referral is not in compliance with Article 113 of the Constitution because he has failed to prove that he is still an authorized party for purposes of filing this referral.
27. The Court also assesses whether the Referral is not manifestly ill-founded and whether the presented facts present constitutional grounds so that the Court would then deal with the merits of the case.
28. In this relation, the Court refers to Rule 36 of Rules of Procedure of the Constitutional Court which provides:

*"The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded."*
29. Article 46 of the Constitution provides:
 - a. 1. *The right to own property is guaranteed.*
 - b. 2. *Use of property is regulated by law in accordance with the public interest.*
 - c. 3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
 - d. 4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
30. On 12 September 2011 the Municipal Court in Prishtina based on Conclusion E.nr.1168/10 on Sale of Immovable Property no. UL-71914059-04949, Property of the debtor warrantor, Murat Plakolli (mortgager), determined that, as a buyer, the creditor Pro Credit Bank was the most suitable bidder that offered the highest price for buying the said immovable property.

31. On 6 October 2011, the Municipal Court in Prishtina, rendered Resolution E.no.1168/10 whereby it ascertained that the immovable property mortgaged by the deceased was sold to the creditor Pro Credit Bank, as the only bidder, the most suitable and who offered the highest price for buying the immovable property. The debtor warrantor was ordered to hand over in possession the mortgaged property to the creditor Pro Credit Bank within 7 days.
32. It appears that the Applicant is dissatisfied with the findings of fact and conclusions of law that the municipal court made in his case but is unable to demonstrate how those findings or conclusions may have violated his constitutional rights.
33. The Court, with respect to the allegation of the representative, emphasizes that the alleged violation of the right guaranteed by Article 46 [Protection of Property] has not been sufficiently substantiated, due to the fact that the Municipal Court in Prishtina rejected his right to appeal the decision on appointing him a temporary representative of the debtor warrantor now late Murat Plakolli, owner of the mortgaged property.
34. The Constitutional Court is not a court for the verification of facts. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore it cannot act as a "court of fourth instance" (see, *mutatis mutandis*, i.a., Akdivar versus Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).
35. It is the duty and obligation of the ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1]). It appears that the Municipal Court of Prishtina performed that function in this case.
36. From the case file the Constitutional Court notes that the Applicant has failed to prove that his rights guaranteed by Article 46 of the Constitution have been violated, as the facts and arguments presented by the Applicant do not constitute constitutional grounds of a procedural violation during the entire course of the trial in the regular Courts. His property dispute was resolved by a competent court and there is no evidence that he or those he purports to represent were arbitrarily deprived of any property rights.
37. In fact, the parties should prove that the decisions of courts or public authorities have violated their rights guaranteed by the Constitution and international instruments which are directly applicable in the Republic of Kosovo. If an Applicant fails to substantiate the allegation of a violation of the constitutionally guaranteed rights, it is not the obligation of the Court to build his/her case. So in this context the Court will consider the Referral as manifestly ill-founded.
38. As to the request for protection of identity, the representative did not provide any evidence proving that the disclosure of his identity would present any harm for him, therefore the Court did not find a legal basis for the non-disclosure of the identity of the representative and the deceased.

39. For the foregoing reasons, the Applicant's Referral is incompatible with the requirements of Article 113 of the Constitution as well as the requirements of Rule 36.2 (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Rule 36.2 (c) and Rule 56.2 of the Rules of Procedure, on 20 June 2012, unanimously

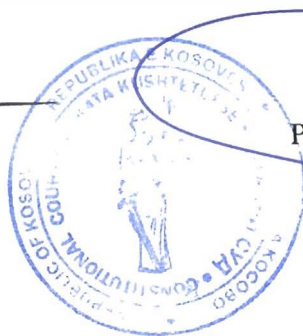
DECIDES

- 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


Robert Carolan




Prof. Dr. Enver Hasani