



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

Pristine, 06 July 2012
No. ref.: RK267/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI30/12

Applicant

Afrim Kalaja

**Constitutional Review of the Resolution of the District Court in Prishtina Ac.no
1496/2011 dated 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 and
Ivan Čukalović, Judge

Applicant

1. The Applicant is Mr. Afrim Kalaja (hereinafter: the "Applicant") from Dabishefc village residing in Prishtina, "Jakup Ferri" Str. no. 29.

Challenged decision

2. The challenged decision of the public authority, by which are alleged violations of rights guaranteed by the Constitution of Kosovo, is the Decision of the District Court in Prishtina Ac.no.1496/2011 dated 24 January 2012, for which the party has not specified, in the application form to the Court, the date when the decision was served to him.

Subject matter

3. The main subject matter of the case, submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 26 March 2012, is the Constitutional Review of the Resolution of the District Court in Prishtina Ac.no.1496/2011, by which was rejected the appeal of the Applicant and was confirmed the Resolution of the Municipal Court in Prishtina E. no. 1168/10, dated 06.10.2011, and by which "was determined the sale of mortgaged immovable property of the collateral Mr. Murat Plakolli' to the creditor PROCREDIT BANK, with its office in Prishtina.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution"), Article 47 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (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").

Proceeding before the Court

5. On 26 March 2012, the Applicant submitted the Referral to the Court and the same was registered in the Court with no. KI 30/12.
6. On 27 March 2012, by the Decision no. GJ.R.KI 30/12, the President appointed the Deputy-President Mr. Kadri Kryeziu as Judge Rapporteur, while by decision no. KSH 30/12, appointed the Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and prof. dr. Enver Hasani.
7. On 5 June 2012, the Constitutional Court notified the Applicant about the registration of the Referral.
8. On 5 June 2012, the Court notified the District Court in Prishtina about the registration of the Referral and requested their written reply regarding this Referral, but it has not received any written comment regarding this case.
9. On 29 June, the Constitutional Court received the reply of the Municipal Court regarding the case, explaining the case chronology and the same time attaching the court decisions that Constitutional Court had already in the case file, submitted by the Applicant.
10. On 3 July 2012, after reviewing the report of the Judge Rapporteur Kadri Kryeziu the Review Panel, unanimously proposed to the full court inadmissibility of the Referral.

Summary of facts

11. On 13 October 2008, the ProCredit Bank with its office in Prishtina, in capacity of the Creditor signed the Loan Agreement no. A-59246, with Mr. Afrim Kalaja-the owner of

- the NTP "Ideal" with its office in Prishtina "Drenica" Str. No. 29, in capacity of the Debtor and Mr. Murat Plakolli residing in Prishtina "Vëllezërit Fazliu" Str. and Ms. Hasime Kalaja from Prishtina, "Jakup Ferri" Str. No. 29, in capacity of co-borrowers, in a value of 100.000 (one hundred thousand) euro for a period of 48 months.
12. Article 8 of this contract has provided that with signing of this agreement, the co-borrowers take over full responsibility of the loan agreement in case the debtor does not fulfill contractual obligations towards the creditor.
 13. As composing a part of this agreement was also the Mortgage Agreement, which as an subject has immovable property as described in the possession list 4949- Municipality of Prishtina, owned by Mr. Murat Plakolli, signed between Mr. Murat Plakolli from Prishtina as Collateral, on whose behalf have signed, according to the court authorization, Mr. Muhamet Plakolli and Mr. Afrim Kalaja, the owner of NTP "Ideal", in the capacity of the Debtor, by which mortgage was provided.
 14. On 20 May 2010, after conclusion that the loan was not paid according to the conditions foreseen by the Loan Agreement, ProCredit Bank in capacity of Creditor filed with the Municipal Court in Prishtina the **Proposal for Execution of Immovable Property–Mortgage**, which was the subject of the Mortgage Agreement.
 15. On 17 May 2011, in the Municipal Court in Prishtina was held public session according to the proposal of the creditor ProCredit Bank, in which has participated Mr. Kalaja in capacity of the debtor, while Mr. Murat Plakolli and Mrs. Hasime Kalaja did not appear in the Court, although they have received the invitations. From the copy of minutes, it is concluded that Mr. Afrim Kalaja had stated that he has received the loan in the above- mentioned amount, but due to financial crisis he is not able to pay it.
 16. On the same day, on 17 May 2011, the Municipal Court has reached a conclusion on the sale and scheduled first public sale with public auction of the immovable property of the debtor Mr. Murat Plakolli. The Court stressed that, " appealing is not allowed against this conclusion."
 17. From the minutes of the Municipal Court in Prishtina, taken on the occasion of Public Auctions sale, it has been concluded that three such public auctions were held and that is on 21.07.2011, on 12.09.2011 and finally on 6.10.2011, when the sale session of the immovable property was held. The Constitutional Court also concludes that on the occasion of the first session the debtor-loan receiver Mr.Afrim Kalaja had stated that the guarantor –collateral Mr.Murat Plakolli passed away and for this he submitted the death certificate, by requesting at the same time the change of the subject of the mortgage, but his was not accepted by the creditor and the Municipal Court appointed temporary legal representative–the attorney Mr. Naser Peci to protect the interests of Mr. Plakolli in this process.
 18. In the first two public auctions, there were no bidders to purchase the mortgaged immovable property, so in every subsequent auction the value of mortgaged immovable property was decreased.
 19. On 6 October 2011, the Municipal Court in Prishtina issued Resolution E.no.1168/10, by which in item I – is concluded that was sold to the Creditor ProCreditbank as the only bidder –the immovable property of the collateral Mr. Murat Plakolli identified in the certificate on the property rights no. UL-71914059-04949, which is in the cadastral 1994-0 with culture house yard" in Prishtina CO Kolonia e Re, in a surface of 224 m² at the amount of 30.000 (thirty thousand euro). Also, in item II the debtors were ordered

to submit in possession the immovable property to the Creditor within 7 days from the day this Resolution enters into force.

20. Against this Resolution, within the time limit, Mr. Afrim Kalaja – debtor in capacity of the NTP 'Ideal' representative and Mr. Naser Peci, attorney in capacity of temporary representative of the co-borrower – now the late Mr. Murat Plakolli filed an appeal to the District Court in Prishtina.
21. On 24 January 2012, the District Court issued the Resolution Ac. no 1496/2011 rejecting the appeals of applicants as ungrounded and at the same time confirmed the Resolution of the Municipal Court in Prishtina E.no.1168/2010 dated 6.10 2011.
22. The reasoning part of this Resolution states that the District Court did not find facts about the violation of the provisions of Executive Procedure and that the final price of the mortgaged property, after two unsuccessful sales, was determined pursuant to Article 203.5 of the Law on Executive Procedure.

Applicant's allegations on constitutional violations

23. The Applicant alleges that with the challenged Resolution were violated the rights guaranteed by the Constitution of the Republic of Kosovo as follows: Article 21 (General principles), Article 24 (Equality before the law) Article 54 (Judicial protection of rights) of the Constitution of the Republic of Kosovo and Article 8 of the Universal Declaration on Human Rights.

Assessment of admissibility of the Referral

24. In order to be able to adjudicate the Referral of the Applicant, the Court has to assess beforehand whether the Applicants have met the requirements of admissibility, which are foreseen by the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.
25. Regarding this, the Court refers to the 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.”
26. The Court, in this case, refers to the:

Rule 36 of the Rules of Procedure of the Constitutional Court where it is stipulated:

“1. The Court may only deal with Referrals if:

c) the Referral is not manifestly ill-founded.
27. Referring to the Applicant's request and of the alleged violations of the constitutional rights, the Constitutional Court emphasizes that:
28. The Constitutional Court is not the fact finding court, and in this case emphasizes that the fair and complete determination of factual situation is under full jurisdiction of the regular courts, such as in this case reviewed by the Constitutional Court, when the execution procedure was the jurisdiction of the Municipal Court and the District Court in Prishtina which decided concerning the mortgaged property in accordance with the mortgage contract, and that its role (of the Constitutional Court) is only to ensure

compliance with the rights guaranteed by the Constitution and other legal instruments and therefore it cannot act as the “court of fourth instance”, (see, *mutatis mutandis*, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

29. The mere fact that the Applicants are unsatisfied with the outcome, cannot serve as the right to file an arguable claim on violation of the Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005 or , Tengerakis v. Cyprus, no. 35698/03, Decision dated 9 November 2006, § 74).
30. In fact, apart from expressing the dissatisfaction with the final outcome of the trial, the Applicant has not argued convincingly his allegations for violation of the right to equality before the law, because he did not present evidences that he was treated unequally to the opposing party in the trial and he failed to specify where does the alleged inequality lie.
31. The Applicant was also an active part of the trial in the executive procedure and from the attached documents to the Referral it cannot be concluded that he has submitted evidence that would justify violation of Article 54 of the Constitution of Kosovo (Judicial Protection of Rights)
32. To declare a Judgment or a Resolution of a public authority as unconstitutional, the Applicant should *prima facie* show that the” Decision of a public authority, as such, will be an indicator of a violation of the request to a fair trial and if, the unfairness of that decision is so evident that the decision may be considered as **extremely arbitrary** (see ECHR, *Khamidov against Russia*, no. 72118/01, Judgment dated 15 November 2007, § 175).
33. The Constitutional Court did not find elements of arbitrariness and neither of alleged violation of human rights as the Applicant had alleged in the Resolution of the District Court Ac. no 1496/2011, dated 24 January 2012.
34. In these circumstances, the Applicant “does not sufficiently substantiate his claim” and cannot be concluded that the Referral was founded therefore, the Court pursuant to the Rule 36 paragraph 2 items c and d , finds that the Referral should be rejected as being manifestly ill-founded and consequently.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on Constitutional Court and Rule 36 of the Rules of Procedure, the Constitutional Court, in its session held on 3 July 2012, unanimously

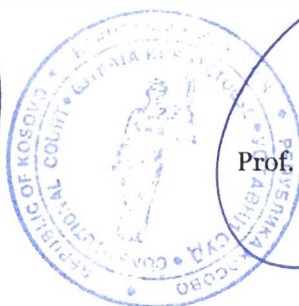
DECIDES

- I. TO DECLARE the Referral 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Mr.sc.Kadri Kryeziu




Prof. dr. Enver Hasani