



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 10 march 2011
Ref. No.: RK 95/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 49/10

Applicant

Abdullah Shkodra

**Constitutional Review of the Judgment of the District Court of Gjilan, AC.no.
70/2010, dated 15 April 2010**

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. Abdullah Shkodra, residing in Gjilan.

Challenged decision

2. The decision challenged by the Applicant is the Judgment of the District Court of Gjilan, Ac.no.70/2010 of 15 April 2010.

Subject matter

3. The Applicant claims that, as to the execution of the loan agreement concluded between him and the Creditor, the regular courts have not taken into consideration the fact (1) that he has reached an oral agreement with the Creditor not to pay the loan in full because of his financial problems and (2) that the Creditor has not registered the payments already made by him. The Applicant bases his claim on the fact that the Creditor has not given him a grace period.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 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

5. On 28 June 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 26 July 2010, the Applicant informed the Court that he had received a communication of the Municipal Court of Gjilan, dated 20 July 2010, regarding Case E.nr.764/2009, informing him that an expert for the reassessment of the value of his mortgaged real estate had been appointed. The Applicant, however, questions the objectiveness of the expert, since he lives in the same neighbourhood as the Judge in his case. He, therefore, requests the appointment of an expert who will re-asses the value of the mortgaged real estate in a fair and objective manner.
7. On 25 August 2010, the Referral was forwarded to the District Court of Gjilan.
8. On 22 October 2010, additional documents and clarification were requested from the Applicant, which he submitted on 1 November 2010.
9. On 5 November 2010, additional documents were requested from the Municipal Court of Gjilan and the District Court of Gjilan, which, so far, have not been submitted.
10. On 20 January 2011, the Review Panel, consisting of Judges Snezhana Botusharova (Presiding), Ivan Čukalovič and Enver Hasani, considered the Report of the Judge Rapporteur Iliriana Islami and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. On 31 March 2004, the Company of the Applicant "Mimoza-Commerce" (hereinafter: the "Applicant") entered into a loan agreement in the amount of 50.000,00 Euro with a commercial bank (hereinafter: the "Creditor") for a twelve months period.

12. On 17 May 2005, the Municipal Court of Gjilan allowed the Creditor to apply the execution clause in the loan agreement, since the Applicant had not honoured that agreement and, on 31 July 2007, appointed an expert to assess the value of the mortgaged real estate of the Applicant.
13. On 16 May 2008, the Municipal Court of Gjilan fixed the market price of the mortgaged real estate of the Applicant based on the evaluation of the expert.
14. The Applicant complained about this market price to the District Court of Gjilan, which by decision of 11 September 2008 rejected the Applicant's complaint as unfounded, stating that the first instance court had correctly applied the substantive and procedural law.
15. On 16 November 2009, the Applicant filed a request for return to the previous situation with the Municipal Court of Gjilan, which, on 15 December 2009, ruled that the Applicant's request could not be granted, since Article 14.2 of the Law on Execution Procedure provides that the return to the previous situation is only permitted in case of (1) non-observance of the time limit for filing an objection and (2) an appeal against the executable decision for compulsory execution, which was not the case in this matter.
16. The Municipal Court further stated that "the debtor filed his request for return to the previous state on 16 November 2009 i.e. during the stage when the session for the execution of conclusions on the first public auction was held according to the creditor's request for execution on 13 November 2009, and, according to the procedural decision rendered on 13 November 2009, since there was no bidder for the purchase of the mortgage, pursuant to the provisions of the Law on Execution Procedure, a decision was reached to have a second public auction".
17. The Applicant complained against the Municipal Court's decision of 15 December 2009 to the District Court of Gjilan, which, on 15 April 2010, rejected the complaint as unfounded, by repeating the findings of the Municipal Court. The District Court further stated that the Applicant had not submitted any evidence that he had entered into an oral agreement with the creditor about the reimbursement of the loan.
18. On 16 July 2010, the Municipal Court of Gjilan appointed the expert for the assessment of the value of the mortgaged real estate.

Applicant's allegations

19. The Applicant alleges that he reached an oral agreement with the Creditor not to have to pay the loan in full because of his financial problems. He further alleges that the Creditor has not registered the payments already made by him.
20. The Applicant refers also to the fact that the Creditor should have given him a grace period.
21. Additionally, the Applicant alleges that the courts and the Creditor did not take into account his interest, when estimating the value of the mortgaged property and the oral agreement he made with the Creditor.

Assessment of the admissibility of the Referral

22. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and, as further specified, in the Law and the Rules of Procedure.

23. In this connection, the Court refers to Article 48 of the Law:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”

24. Under the Constitution, the Court is not to act as a court of fourth instance, when considering the decisions taken by 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).

25. 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, App. No. 13071/87 adopted on 10 July 1991).

26. In this connection, the Court notes that, the Applicant has not submitted any prima facie evidence indicating what rights and freedoms he claims to have been violated and what concrete act of public authority is subject to challenge, as required by Article 113.7 of the Constitution and Article 48 of the Law (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

27. It follows 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.”

FOR THIS REASON

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (1.c) of the Rules of Procedure, 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.
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Iliriana Islami



President of the Constitutional Court

Prof. Dr. Enver Hasani