



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

Pristine, 08 January 2013
Ref. No.: RK336/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI71/12

Applicant

Fikrije Sermahaj

**Constitutional Review of the Decision of the District Court in Pristina
Ac.no.273/2012 dated 27 April 2012**

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 Fikrije Sermahaj, residing in Pristina.

Challenged decision

2. The challenged decision is the Decision of the District Court in Pristina Ac.no.273/2012 dated 27 April 2012.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the constitutionality of the Decision of the District Court in Pristina Ac.no.273/2012 dated 27 April 2012 by which the Applicant's appeal in the execution proceedings has been rejected.
4. In her Referral the Applicant proposed to the Constitutional Court to protect her rights since she is a person who has no house of her own and that pursuant to the challenged decision she has to leave her apartment.

Legal Basis

5. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of the Law, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Proceedings before the Court

6. On 23 July 2012, the Applicant submitted a referral with the Constitutional Court.
7. On 4 September 2012, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Cukalovic and Arta Rama-Hajrizi.
8. On 27 November 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. From the documents submitted in support of the Applicant's referral the following facts can be summarized.
10. On 7 November 2000 the Applicant as a buyer signed a contract on purchase of the apartment located in Pristina with a seller M.C. This contract was certified before the Municipal Court in Pristina on 24 August 2000 under VR no 1875/2000.
11. On an unspecified date the Applicant and M.C. signed certificate confirming that the Applicant paid a full purchasing price in the amount of 63,000 German Marks for the apartment to M.C.
12. On 17 December 2008, the Municipal Court in Pristina issued Judgment C. no 2977/07 and approved the statement of claim of claimant M.I. against the Applicant.
13. By that judgment the Applicant was obliged to pay 32,000 Euro to the claimant in the name of paid money for the purchased apartment in Pristina. In the reasoning of the judgment it was mentioned that the Applicant is a sister-in-law of the claimant. It was also mentioned that the Applicant "did not offer any evidence if she had any money to buy the contentious apartment...while on the other hand has resulted as not

contentious the fact that the claimant for years has worked in Switzerland where he earned money, therefore at this situation the court came into conclusion that the respondent did not possess money to purchase apartment, while the money in the name of sale-purchase price of the apartment paid the claimant...”

14. While the Applicant had possibility to submit an appeal against this judgment to the District Court in Pristina, it is not clear if she did that.
15. The judgment mentioned above (C.no 2977/07 of the Municipal Court in Pristina dated 17 December 2008) became final and executable on an unspecified date.
16. It appears that pursuant to the Law on Executive Procedures on 27 April 2012, the District Court in Pristina issued challenged Decision Ac. No. 273/2012. By that Decision the appeal of the Applicant was rejected as ungrounded and the Decision of the Municipal Court in Pristina E.no 2902/2012 and the Conclusion on the selling of the immovable property dated 27 December 2011 was confirmed.
17. From the reasoning it can be asserted that the Municipal Court in Pristina, as the court of the first instance, issued a Decision on Execution, E.no 2902/2010, as well as conclusion on selling the immovable property to the creditor M.I. It seems that M.I. was only bidder in the public sale of the aforementioned apartment who has offered the price of 32,000 Euro. Pursuant to that decision (E.no 2902/2010) the Applicant was obliged to handover the apartment to the M.I. Furthermore, it was stated that the Applicant's appeal against the Municipal Court in Pristina (E.no 2902/2010) is ungrounded since from the case files it is clear that the ruling and of the first instance court and conclusion of selling were made through a public sale and that the only bidder was the creditor (i.e. M.I.)
18. Finally, on 5 June 2012, the Municipal Court in Pristina, issued Conclusion E.no 2902/2010 scheduling the eviction of the Applicant for 26 June 2012.

Applicable Law

19. Law on Executive procedure (No. 03/L-008) in Articles 12 and 14 prescribe remedies against decisions issued in the executive procedure as follows:

“Article 12

Remedies for attacking decisions

12.1 In the executive procedure, regular legal remedies are objection and appeal, if these are not excluded by this law.

12.2 Against the decision of first instance decision might be filed an objection, while appeal might be filed only in the cases foreseen by this law.

12.3 The objection is presented to the court which has issued the decision in the time frame of 7 days from the day of delivery of decision, unless otherwise foreseen by this law. About the objection decides the court which has issued the decision.

12.4 Against the issued decision regarding the objection might be filed an appeal within time-frame of 7 days from the day of delivery of decision.

12.5 For the filed appeal is competent to decide the court of second instances.

12.6 *The objection and appeal does not halt the executive procedure, but fulfillment of the request of proposer for execution is adjourned until the first instance court decides on presented objection. Exceptionally, when with the executive title is assigned obligation on legal nutrition, or if the execution is conducted through transfer of money from transaction account of legal person in the account of the same type of the proposer of execution, but also in other cases foreseen by this law, the credit might be realized even before the decision for objection of debtor.*

12.7 *Against the conclusion, as type of decision, in principle is not permitted a legal remedy.*

Article 14 **Extra-ordinary legal remedies**

14.1 *Against the final decision issued in executive and security procedure is not permitted the revision and repetition of the procedure.*

14.2 *Restitution into previous state is permitted only in case of non-preservation of time limit for filing an objection and appeal against the executable decision for compulsory execution.”*

Applicant's Allegations

20. The Applicant's main argument in support of her referral is that she is unemployed, and she has child of 9 years of age, and that she does not possess any movable or immovable property.

Assessment of the Admissibility of the Referral

21. The Constitutional Court would like to recall that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the District Court in Pristina, unless and in so far as they may have infringed rights and freedoms protected by the Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular 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, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
22. In this regard the Constitutional Court notes from the facts submitted in the Referral, the Applicant have used all legal remedies prescribed by the Law on Executive Procedure cited above, by submitting the appeal against Decision on Execution (E.no 2902/2010) issued by the Municipal Court in Pristina and that the District Court in Pristina have taken into account and indeed answered her appeals on the points of law.
23. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

24. In conclusion, the Applicant has neither built a case on a violation of any of her rights guaranteed by the Constitution nor has she submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
25. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded.*"

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure of the Constitutional Court the Constitutional Court, 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


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani