



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Pristina, 15 October 2010
Ref. No.: RK 50/10

RESOLUTION ON INADMISSIBILITY

in

Case No.KI 20/10

Muhamet Bucaliu

vs.

Decision KMLC.no. 09/10 of 24 February 2010 of the State Prosecutor

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. Muhamet Bucaliu, residing in Ferizaj.

Challenged Decision

2. The Applicant challenges Decision KMLC.No. 09/10 of the State Prosecutor dated 24 February 2010.

Subject Matter

3. The Applicant complains that he has not received the execution decision of the Municipal Court of Ferizaj dated 11 January 2008 and that the same court has not decided the case within the limits of the claim, when evaluating the value of the property.
4. He alleges, that Article 24 (1) [Equality before the Law], Article 31 (1) [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution have been violated.
5. The Applicant also requests the Court to decide on his request for interim measures against the execution procedure in respect to his property in order to avoid any risk of irreparable damage.

Legal Basis

6. Article 113(7) of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 22(7) and (8) and Article 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter referred to as: the Law) and Sections 51, 53 and 54(b) 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

7. On 4 March 2010, the Applicant filed a referral with the Court challenging Decision KMLC.No. 09/10 of the State Prosecutor, dated 24 February 2010, and submitted to the Court a request for interim measures.
8. On 13 July 2010, the Review Panel, consisting of Judges Ivan Čukalović (Presiding), Enver Hasani and Iliriana Islami, considered the report of the Judge Rapporteur Snezhana Botusharova and made a recommendation to the Court on both the Applicant's request for interim measures and the inadmissibility of the Referral .

Summary of the facts

9. From the documents submitted by the Applicant it appears that, on 14 June 2005, he entered into a mortgage agreement (Agreement No. 11715/H) with the Raiffeisen Bank, whereby he deposited his immovable property (Cadastral Plot No.1071 in Ferizaj) as a pledge for a credit given to the debtor "Nera Impex" in Ferizaj.
10. On 20 June 2005, the Municipal Cadastral Office of Ferizaj decided to register the mortgage agreement (Decision on Registration of Mortgage No. of Protocol: 25-72217092-00584).
11. On 10 January 2008, the Raiffeisen Bank submitted a request to the Municipal Court of Ferizaj for the execution of the sale of the Applicant's property after the debtor had failed to honor the mortgage agreement.
12. By Decision E.No. 04/2008 of 11 January 2008, the Municipal Court approved the request for execution of the Raiffeisen Bank.
13. On 20 October 2009, the Municipal Court of Ferizaj (Decision E.No. 04/2008 of 20 October 2009), without holding a hearing, decided on the value of the immovable

property, it being a total amount of 1.096.500 Euro in accordance with the market value. This estimation was done by a financial expert in March 2008. The Court also decided on the conclusion of the public sale of the real estate and the assets pledged which was set for 15 February 2010.

14. The Applicant appealed the decision of the Municipal Court of Ferizaj to the District Court of Pristina, arguing that the court had assessed the factual situation in a wrongful manner.
15. On 11 November 2009, the District Court of Pristina (Decision Ac.No. 1292/2009 of 11 November 2009) rejected the Applicant's claim as unfounded and upheld the decision of the Municipal Court of Ferizaj to allow the execution. The District Court concluded that the assessment of the factual situation was accurate and done in accordance with applicable law.
16. On 8 February 2010, the Applicant submitted a claim to the Municipal Court of Ferizaj requesting the annulment of its Decision E.No. 04/08 of 11 January 2008.
17. On the same date, the Applicant submitted a claim for protection of legality to the State Prosecutor against the decisions of the Municipal Court of Ferizaj and of the District Court of Pristina. The State Prosecutor found that there was no legal basis for the claim and concluded that the Applicant as a guarantor of the debtor Nera Impex and the debtor itself were at the hearing of the Municipal Court of Ferizaj on 22 September 2009 and none of them had submitted an objection against the execution, except for a claim against the estimation of the value of the property.

The Applicant's allegations

18. The Applicant alleges that he has not received the decision on execution of the Municipal Court of Ferizaj of 11 January 2008 and that, therefore, the Municipal Court has violated Article 47(1) and (2) of the Law on Execution Procedure.
19. The Applicant further alleges that the Municipal Court, in Decision E.No. 04/2008 of 20 October 2009, did not rule within the limits of the claim, since it had determined the execution of the entire property, instead of the property mentioned in the possessions list No. 1071. In his opinion, the Municipal Court, therefore, violated Articles 49 and 22 of the Law on Execution Procedure and Article 22 of the Law on Contested Procedure.
20. The Applicant claims a violation of Article 24(1) [Equality before the Law], Article 31(1) [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution.

Assessment of the request for interim measures

21. In light of the facts provided by the Applicant, the Court finds that the Applicant has failed to establish that there exists a prima facie case for the Court to decide on his request for interim measures, as required by Article 27 of the Law.
22. The Court, therefore, concludes that the request for interim measures is unsubstantiated, the Applicant not having submitted any convincing arguments that he might sustain irreparable damage, if his request for interim measures would not be granted.

Assessment of the admissibility of the Referral

23. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution that are further specified in the Law and the Rules of Procedure.
24. However, as to the requirement that the Applicant must show that he has exhausted all legal remedies as provided by law, the Court notes that the Applicant could have complained to the Municipal Court of Ferizaj and the District Court of Pristina that he had not received Decision E.No. 04/08 of 11 January 2008 of the Municipal Court of Ferizaj and that the same Court, in its execution decision, had gone outside the limitations of the claim. Instead the Applicant only submitted a claim against the evaluation of the value of the property.
25. It follows, that the Applicant has not established that he has exhausted all legal remedies available under applicable law.
26. The Court, therefore, concludes that the Referral is inadmissible.

FOR THESE REASONS

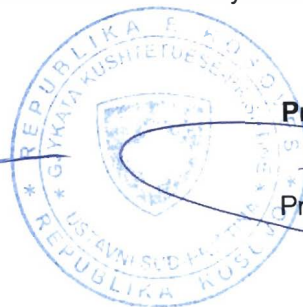
27. The Constitutional Court, pursuant to Articles 27 and 47 of the Law, and Section 54 (b) of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the Request for Interim Measures.
- II. TO REJECT the Referral as Inadmissible.
- III. 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.
- IV. This Decision is effective immediately.

Judge Rapporteur


Snezhana Botusharova



President of the Constitutional Court


Prof. Dr. Enver Hasani