



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 10 Aprila 2018
Ref. No.: RK 1208/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI130/17

Applicant

Ndue and Simon Palushaj

Constitutional review of the procedures of public authorities

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Ndue and Simon Palushaj (hereinafter: the Applicants).

Challenged decision

2. The Applicants do not specifically challenge any decision of the public authorities. However, they have attached to their Referral several decisions of the regular courts which result in their favor.

Legal basis

3. The subject matter, in fact, relates to the Applicants' request to the Court to oblige public authorities, respectively the relevant prosecutor's office and the regular courts to allow them to realize their property rights, which are guaranteed to individuals under Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 3 November 2017, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 November 2017, the President of the Court, by Decision No. GJR. KI130/16 appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu (member) and Ivan Čukalović (member).
7. On 6 November 2017, the Court notified the Applicant about the registration of the Referral and requested the latter clarify and complete the Referral. However, the Applicants did not submit additional information regarding their Referral within the time limit set by the Court.
8. On 13 March 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

9. On 10 November 2015, at the Applicants' request, the Basic Court in Prishtina (Decision C. No. 2953/11) decided in favor of the Applicants, regarding the ownership over the immovable property (apartment), which is located in Dardania neighborhood in Prishtina (SU6/6, B2, entry No.3).
10. On an unspecified date, the Applicants submitted a criminal report to the State Prosecution, against citizen I. B., because of the violation of the inviolability of the abovementioned apartment, which they claim is theirs.

11. On 17 November 2015, the Basic Court in Prishtina, by Judgment P. No. 4216/12, pursuant to Article 166 (1) of the Criminal Code of Kosovo (CCK), found I. B. guilty and sentenced him to an imprisonment sentence of 7 (seven) months. The punishment would not be executed under a condition that the accused I. B. did not commit another criminal offense within 1 (one) year.
12. Judgment P. No. 4216/12 of the Basic Court in Prishtina was appealed by I. B. with the Court of Appeals, on the grounds of essential violations of the provisions of the criminal procedure and erroneous application of the substantive law.
13. On 25 February 2016, the Court of Appeals, by Judgment PA. No. 69/2016, upheld Judgment P. No. 4216/12 of the Basic Court in Prishtina, of 17 November 2015.
14. On 27 May 2016, the Applicants filed again criminal report against I.B with the State Prosecution because the apartment in question was not released. The Applicants have not provided any further information as to what stage is their procedural initiative.
15. From the case file, it can be noted that on 3 September 2016, the Applicants filed a submission with the Supreme Court, which in substance is identical to the Referral submitted by them to the Court. Even with regard to this procedural initiative, the Applicants have not provided any information on its phase of development.

Applicant's allegations

16. The Applicants allege: *"As injured parties we are unable to exercise our right to take the possession of the apartment which is my property –the property of Mr. Simon Palushaj, we do not achieve that the perpetrator of the criminal offense is punished according to the law and to force to release the apartment he occupies usurped for 18 years."*
17. In addition, the Applicants allege that: *"The prosecution and the courts are applying double criteria in the case of the criminal offense of violation of the inviolability of the apartments, so in most cases when the accused is found guilty of this criminal offense by the imposition of the punishment is obliged that within the prescribed time limit also to release the occupied apartment. In our case the prosecutor has not made such a proposal while the injured party has made this proposal but the court by the judgment did not oblige the accused to vacate the apartment."*
18. Finally, the Applicants request the Court to take the necessary legal measures in order their civil and criminal case takes final form and the apartment is returned to their possession, while the perpetrator of the criminal offense be punished by law.

Admissibility of the Referral

19. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and Rules of Procedure.

20. In this respect, the Court refers to Article 22.4 [Processing Referrals], of the Law which stipulates:

“4. If the referral ... is...incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for ... supplementing the respective referral (...).”

21. The Court also refers to the provisions of Rules 29 [Filing of Referrals and Replies], sub-rule (2) (h), which stipulates:

“(2) The referral shall also include:

[...]

(h) the supporting documentation and information.

[...]”

22. In addition, the Court takes into account Rule 32, sub-rule (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which establishes:

(5) “The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral (...).”

23. The Court recalls that the Applicants specifically do not challenge any act or decision of the public authorities. In fact, the Court notes that the decisions of the regular courts, which were attached to the Referral, were decided in favor of the Applicants.

24. From the submissions of the Referral, the Court notes that the Applicants' allegations, in particular, relate to the proceedings, respectively the criminal report initiated by the latter, to the State Prosecution, against the citizen I.B. due to the non-release of the apartment, which they claim is theirs.

25. In this respect, the Court, in accordance with the provisions of Article 22 (4) and Article 29 (2) of the Law, on 6 November 2017, requested the Applicants, that within the time limits established by law, to clarify their Referral and submit all the necessary information for further proceeding of the case. However, the Applicants did not submit any additional information to clarify and substantiate their Referral.

26. In this regard, the Court emphasizes that it is not its duty and responsibility to explore and build the cases raised by the Applicants. The Court reiterates that the responsibility for fulfillment of the formal-procedural criteria as required by the Constitution, the Law and the Rules of Procedure falls on the Applicants if they fail to do so.

27. For these reasons, in the present case, the Court cannot take into account the Applicants' claims because they failed to meet the criteria required by the abovementioned provisions (see, Constitutional Court, Decision on Rejection of Referral in Case K103/15, the Applicant: *Hasan Beqiri* of 13 May 2015, paragraphs 14, 15, 17, 19, 20 and 21).
28. In sum, the Court considers that the Applicant's Referral does not meet the formal-procedural requirements for further review, because it is incomplete with the supporting information and documentation, as required by provisions of Article 22.4 of the Law and provisions of Rule 29 (2) (h) of the Rules of Procedure.
29. Therefore, the Applicants' Referral is to be summarily rejected, in accordance with Rule 32 (5) of the Rules of Procedure.

FOR THESE REASONS

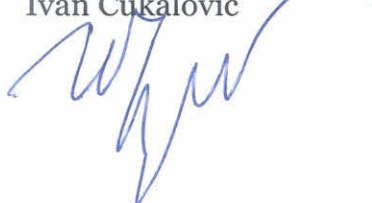
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 32 (5) of the Rules of Procedure, on 13 March 2018, unanimously

DECIDES

- I. TO summarily REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Artta Rama-Hajrizi