



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

Prishtina, on 8 August 2019
Ref. no.:RK 1404/19

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI70/19

Applicant

Lorenc Kolgjera

Constitutional review of Decision PPP. no. 267/2017 of the Basic Court in Prizren, of 15 April 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Lorenc Kolgjera from Municipality of Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment of the Basic Court in Prizren [PPP no. 267/2017], of 15 April 2019 (hereinafter: the Basic Court), whereby the Basic Court rejected his revision against the Decision of the Court of Appeals of Kosovo [Ac. no. 5107/2018], of 8 March 2019 (hereinafter: the Court of Appeals) and all other decisions related to his case.

Subject matter

3. The subject matter is constitutional review of challenged decisions which, according to the Applicant, are in contradiction with the law.
4. The Applicant has not specifically clarified what fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) he claims to have been violated by the challenged decision.

Legal basis

5. The Referral is based on paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests], 48 [Accuracy of the Referral] of Law No. 03/L-121 on the Constitutional Court (hereinafter: the Law) and Rule 32 [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 Court

6. On 26 April 2019, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Referral of the Applicant, which he had submitted to the Post of Kosovo, on 24 April 2019.
7. On 10 May 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Bajram Ljatifi.
8. On 7 May 2019, the Court received from the Supreme Court a submission that the Applicant had submitted on 25 April 2019 to the Supreme Court, for the Constitutional Court with a note that based on the “*title [of the complaint], it seems that the same was sent to the Constitutional Court, while the envelope is marked the Supreme Court, [therefore] we are sending the submission in question to you to proceed further*”.
9. On 21 May 2019, the Court notified the Applicant, the Court of Appeals and the Basic Court for the registration of the Referral.
10. On 7 June 2019, the Court asked the Applicant to *a)* complete the referral form of the Court; *b)* specify exactly the acts of the public authorities against which the Applicant is complaining; and *c)* clarify his complaints according to the Constitution.

11. On 18 June 2019, the Court received the referral form and several decisions/documents from the Applicant, which he had submitted to the Post of Kosovo, on 17 June 2019.
12. On 23 July 2019, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended the Court to summarily reject the Referral.

Summary of facts

13. The Applicant files referral with the Court for the second time.

Facts related to the first Referral, KI74/17

14. On 28 April 2014, RWC “Radoniqi-Dukagjini” J.S.C. Gjakova (hereinafter: the RWC “Radoniqi-Dukagjini”) submitted a proposal for enforcement against the Applicant and T.K., to the Private Enforcement Agent for the territory of Prizren, based on the authentic document, to oblige the Applicant and T.K., within 7 (seven) days, to pay off the debt of 1332.27 € for irrigation supply services.
15. On 29 September 2014, the Private Enforcement Agent by Order [P. no 331/2014] allowed the enforcement proposal.
16. On 18 May 2017, the Applicant submitted an objection against the Order [P. no 331/2014] for allowing the enforcement proposal.
17. On 29 May 2017, the Basic Court in Prizren [Judgment P. no. 331/2014], dismissed the objection submitted by the Applicant as out of time.
18. On 13 June 2017, the Applicant submitted an appeal to the Court of Appeals.
19. On 20 June 2017, the Applicant submitted Referral KI74/17 to the Constitutional Court of the Republic of Kosovo.
20. On 5 December 2017, the Constitutional Court by Resolution on Inadmissibility in case KI74/17, stated that the Referral is premature as *“the Applicant has not exhausted all effective legal remedies as set out in Article 113.7 of the Constitution, provided by Article 47 of the Law, and further specified in Rule 36 (1) (b) of the Rules of Procedure”*.

Facts related to the current Referral, KI70/19

21. On 31 October 2017, the Court of Appeals by Decision [Ac. no. 3584/17] approved the appeal of the Applicant, annulled the Judgment [P. no 331/2014] of the Basic Court and remanded the case for retrial.
22. On 22 October 2018, the Basic Court by Decision [PPP. no. 267/2017] rejected the objection of the Applicant against the Order [P. no 331/2014] of the Private Enforcement Agent as ungrounded.

23. The Applicant submitted an appeal against the Decision [PPP. no. 267/2017] of the Court of Appeals, alleging essential violations of the enforcement procedure, erroneous determination of the factual situation and erroneous application of the substantive law.
24. On 8 March 2019, the Court of Appeals by Decision [Ac. no. 5107/2018] rejected the appeal of the Applicant as ungrounded and upheld the Decision [PPP. no. 267/2017] of the Basic Court. The Court of Appeals assessed, among others, that the Applicant's debt to RWC "Radoniqi-Dukagjini" was not prescribed because periodic claims were in question and that the Applicant had not submitted evidence that he was not the owner of the land and therefore had no passive legitimacy, as alleged by the Applicant.
25. On an unspecified date, the Applicant submitted a revision to the Basic Court, against Decision [Ac. no. 5107/2018] of the Court of Appeals.
26. On 15 April 2019, the Basic Court by Decision [PPP. no. 267/2017] dismissed the revision of the Applicant as inadmissible because it found that according to Article 68, paragraph 1 of the Law on Enforcement Procedure, "*No repetition and revision of the procedure is allowed in enforcement procedure*". According to legal advice of the Decision of the Basic Court, the Applicant had the right to appeal against the Decision [PPP. no. 267/2017] to the Court of Appeals within 7 (seven) days after receiving the Decision.

Applicant's allegations

27. The Applicant did not specifically mention any right guaranteed by the Constitution, which he alleges to have been violated by the challenged decisions.
28. The Applicant declares before the Court that the property in respect of which the RWC "Radoniqi-Dukagjini" claimed the debt is on the name of third parties and not on the name of the Applicant. Therefore, the Applicant lacks passive legitimacy to be a debtor in connection with water consumed for a property which is not owned by him. Therefore, he alleges that he is obligated to pay for the water that has never used.
29. The Applicant, after explaining the chronology as to how the regular courts, after the Order of the Private Enforcement Agent, have decided with judicial decisions in relation to his case, alleges that intentionally the RWC "Radoniqi-Dukagjini", "*the Private Enforcement Agent and the courts have violated his legal rights both in terms of legality-equality before the law and his constitutional rights*", therefore he expects a fair assessment from the Court.

Admissibility of the Referral

30. In this regard, the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. 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.

31. The Court further examines whether the Applicant fulfilled the admissibility requirements, as prescribed in the Law. In this respect, the Court first refers to Article 47 [Individual Requests] and Article 48 [Accuracy of the Referral] of the Law, which establish:

Article 47 [Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

Article 48 [Accuracy of the Referral]

“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”.

32. In assessing whether the Applicant meets the constitutional and legal requirements for constitutional review of his Referral, the Court recalls that pursuant to Article 113 of the Constitution, individuals are authorized to refer to the Court alleged violations by “*public authorities*” of their fundamental rights and freedoms, guaranteed by the Constitution, after they have exhausted all legal remedies provided by law. The same requirement is also set forth under Article 47 of the Law.
33. Furthermore, Article 48 of the Law specifically obliges the applicants to clarify exactly what rights and freedoms they pretend to have been violated.
34. In the circumstances of the present case, the Applicant has not accurately clarified what rights and freedoms he alleges to have been violated by the challenged decisions and had not clarified his complaints in accordance with the

Constitution. Consequently, the Referrals of the Applicant does not meet the admissibility requirements established by the Constitution and the Law.

35. In such cases, when the Referrals are incomplete, which as such result in failure to meet the constitutional and legal admissibility requirements, the Law and the Rules of Procedure establish the procedure to be followed by the Court in order for the Applicant to be given the opportunity to complete and supplement his Referral. In this respect, the Court refers to paragraph 4, of Article 22 [Processing Referrals] of the Law, and Rule 32 (2) (e) and (h) [Filing of Referrals and Replies] of the Rules of Procedure, which stipulate:

Article 22
[Processing Referrals]

“[...]

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 [...]”
[...].

Rule 32
[Filing of Referrals and Replies]

“32 (2) The referral shall also include:

“[...]

(e) a statement of the relief sought;

“[...]

(g) the procedural and substantive justification of the referral;

“[...]

36. In this regard, the Court recalls that the Referral of the Applicant was received on 26 April 2019. Taking into account that the Referral was incomplete, on 7 June 2019, in accordance with paragraph 4 of Article 22 of the Law, the Court asked the Applicant to complete his Referral, by: a) completing the referral form of the Court; b) specifying exactly the acts of the public authorities against which the Applicant is complaining; and c) clarifying his complaints according to the Constitution.
37. The Applicant, through the letter of 18 June 2019, although he submitted the referral form of the Court and specified court decisions related to his case, he failed to specify the constitutional rights he alleges to have been violated by the public authorities and did not clarify his complaints according to the Constitution.
38. In this regard, and taking into account that the Referral of the Applicant as submitted to the Court, does not meet the admissibility requirements established by the Constitution and the Law, and also despite the request of the Court, the Applicant has not completed nor clarified his Referral, the Court, based on its Rules of Procedure, may summarily reject the Referral. In this

regard, the Court refers to Rule 35 of the Rules of Procedure, which establishes as follows:

Rule 35
[Withdrawal, Dismissal and Rejection of Referrals]

"35 (5) The Court may decide to 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, [...]".

39. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. Therefore, the Court considers that it cannot take into account the Applicant's allegations, as the Referral is incomplete, and because he did not clarify his complaints according to the Constitution (see, *mutatis mutandis*, the case of the Constitutional Court, KI03/15, Applicant: *Hasan Beqiri*, of 13 May 2015, paragraph 19, as well as the case of the Constitutional Court, KI07/16, Applicant: *Rifat Abdullahi*, of 14 July 2016, paragraph 22).
40. Therefore, the Court considers that the Referral of the Applicant does not meet the procedural requirements for further review, because it was not completed with supporting documentation, as required by the Court, based on Article 22.4 of the Law and Rules 32 (2) (e), (g) of the Rules of Procedure.
41. Accordingly, the Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 35 (5) of the Rules of Procedure, concludes that the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 47 and 48 of the Law, and in accordance with Rule 35 (5) of the Rules of Procedure, on 23 July 2019, unanimously

DECIDES

- I. TO 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. This Decision is effective immediately.

Judge Rapporteur

Radomir Laban

President of the Constitutional Court

Arta Rama-Hajrizi



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