



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

Prishtina, on 10 December 2018
Ref. no.: RK 1183/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI74/17

Applicant

Lorenc Kolgjeraj

**Constitutional review of Decision P. No. 331/2014, of the Basic Court in
Prizren, of 29 May 2017**

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 Lorenc Kolgjeraj (hereinafter: the Applicant), from village Breg Drin, Municipality of Prizren.

Challenged decision

2. The Applicant challenges Decision P. No. 331/2014, of the Basic Court in Prizren, of 29 May 2017.
3. The Applicant requests the Court to not disclose his identity with the reasoning that: *'I am a pensioner, former education employee and I am not interested in publishing my data.'*

Subject matter

4. The subject matter of the Referral is the assessment of Decision P. No. 331/2014, of the Basic Court in Prizren, of 29 May 2017 and the alleged delay of proceedings before the Court of Appeals.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 20 June 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 30 June 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka Nimani.
8. On 24 August 2017, the Applicant was notified about the registration of the Referral and he was asked to complete and clarify his Referral in accordance with Rule 29 of the Rules of Procedure.
9. On 6 September 2017, the Applicant submitted the completed referral form.
10. On 28 September 2017, the Court submitted a copy of the Referral to the Basic Court in Prizren and to the Court of Appeals.
11. On 5 December 2017, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of Referral.

Summary of facts

12. Based on the documents submitted, it results that on 28 April 2014, KRU Radoniqi-Dukagjini JSC in Gjakova submitted an execution proposal against the Applicant to the Private Enforcement Agent for the territory of Prizren,

which based on 'credible documents' obliged the Applicant of the Referral to pay the debt of 1332.27 € within a period of seven (7) days for water supply services for irrigation.

13. On 29 September 2014, the Private Enforcement Agent ordered to allow the execution proposal and the Applicant was informed of his right to appeal to the Basic Court in Prizren within 7 (seven) days.
14. On 18 May 2017, the Applicant filed an objection against the order for permitting the execution proposal.
15. On 29 May 2017, the Basic Court in Prizren (Decision P. No. 331/2014) dismissed the objection filed by the Applicant as out of time. The Basic Court, referring to Article 73 of the LEP, found that the Applicant's objection was out of time because it was filed after the 7 (seven) day legal deadline.
16. On 13 June 2017, the Applicant, filed an appeal with the Court of Appeals.

Applicant's allegations

17. The Applicant alleges that the property for which the debt is claimed belongs to the third parties and, therefore, he cannot be sued because he lacks passive legitimacy.
18. The Applicant further adds that: *"the party alleges that KRU Radoniqi, the Private Enforcement Agent and the court have violated his legal rights, both in legality - equality before the law and constitutional right, which we expect to be fairly assessed."*
19. Finally, the Applicant requests the Court: *"to hold that the Court, Private Enforcement Agent have committed a violation ... KRU Radoniqi Dukagjini violated his rights-the debtor where without evidence and arguments he was introduced as a debtor"*.

Admissibility of Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, further foreseen in the Law and specified in the Rules of Procedure.
21. The Court refers to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

"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."
22. The Court also refers to Article 47 [Individual Requests] of the Law, which provides:

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

23. The Court takes into account Rule 36 (1) (b) [Admissibility Criteria] of the Rules of Procedure, which specifies:

“The Court may consider a referral if:

(...)

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”

24. The Court considers that the Applicant enjoys protection under Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights; however, based on the principle of subsidiarity, the Applicant is obliged to exhaust all legal remedies in the regular court proceeding before addressing the Court, as it is established in Article 113.7 of the Constitution.
25. The Court notes that, in the present case, the Applicant filed appeal with the Court of Appeals and that there is still no decision in that proceeding; which means that the proceeding upon the Applicant's appeal before the Court of Appeals is still pending. Consequently, the Applicant's Referral is premature.
26. In this respect, the Court reiterates that the regular courts are independent in exercising their legal powers and it is their constitutional obligation and prerogative to interpret issues of fact and law which are relevant for the cases raised before them. (Constitutional Court of the Republic of Kosovo: Case No. KI151/13 Applicant: *Sitkije Morina*, *Constitutional review of the Judgment of the Supreme Court*, Rev. No. 176/2012 of 18 April 2013, Resolution on Inadmissibility, of 27 December 2013, § 33).
27. The Court also notes that the Applicant, implicitly, wants to be absolved of the obligation to exhaust all legal remedies, however, the Applicant has not provided any evidence that he has used the remedies or if the remedies available to him were inadequate and ineffective, in which case he would be absolved of the requirement of exhaustion of legal remedies (Constitutional Court of the Republic of Kosovo: Case No. KI116/14, Applicant *Fadil Selmanaj*, *Constitutional review of Judgment AA No. 294/2013 of the Court of Appeals of Kosovo*, of 4 February 2014, Resolution on Inadmissibility, of 26 January 2015 §§ 45 and 46 and the references cited in that decision).
28. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case Kl41/09, Applicant *AAB-RIINVEST University L.L.C.*, *Prishtina*, Resolution on Inadmissibility of 21 January 2010, and

mutatis mutandis, see case ECHR, *Selmouni v. France*, No. 25803/94, ECtHR, Decision of 28 July 1999).

29. The principle of subsidiarity requires that the Applicant exhausts all procedural remedies in a regular proceeding, administrative or judicial, so that constitutional violations are prevented, or in case they happen, to rectify such violation of the fundamental rights. (see, case no. KI151/13, Applicant *Sitkije Morina*, and the references mentioned in that decision, § 35).
30. Therefore, the Applicant has not exhausted all effective remedies established by Article 113.7 of the Constitution, provided by Article 47 of the Law, and as further specified in Rule 36 (1) (b) of the Rules of Procedure.

Request to not disclose identity

31. In this regard, the Court refers to Rule 29 (6) [Filing of Referrals and Replies] of the Rules of Procedure, specifying:

[...]

“(6) The party filing the referral may request that his or her identity not be publicly disclosed and shall state the reasons for the request. The Court may grant the request if it finds that the reasons are well-founded”.

32. Regarding the Applicant's request for non-disclosure of his identity, the Court notes that the reasoning that: *“I am a pensioner, a former education employee and I am not interested in publishing my data”* is not the basis for the approval of this request (Constitutional Court of the Republic of Kosovo: Case No. KI22/13, Applicant *Sokol Mushkolaj*, *Constitutional review of Judgment Pkl. No. 164/2012 of the Supreme Court, of 5 December 2012*, Resolution on Inadmissibility of 2 July 2013, § 33).
33. Accordingly, the request for non-disclosure of identity should be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 5 December 2017, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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

Ivan Čukalović



President of the Constitutional

Arta Rama-Hajrizi

