



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

Prishtina, on 23 September 2019
Ref. no.:RK 1432/19

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI44/19

Applicant

Ymer Kubati

**Constitutional review of Decision Ac.no.3072/18 of the Court of Appeals
of Kosovo, of 25 February 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 Ymer Kubati, residing in Prizren (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Decision Ac.no.3072/18 of the Court of Appeals of Kosovo, of 25 February 2019 (hereinafter: the Court of Appeal).

Subject matter

3. The subject matter is the constitutional review of the challenged Decision whereby allegedly the Applicant's rights have been violated contrary to the Law on Public Debt Forgiveness and the Law on Enforcement Procedure.
4. The Applicant has failed to specify which 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 paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, no. 03 / L-121 (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 Constitutional Court

6. On 15 March 2019, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral, which he had submitted at the Kosovo Post Office on 13 March 2019.
7. On 21 March 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Safet Hoxha.
8. On 5 April 2019, the Court notified the Applicant and the Court of Appeal about the registration of the Referral.
9. On 19 April 2019, the Applicant submitted to the Court additional documents, inter alia, the Debt Settlement Agreement entered into by him and the "Ekoregjioni" Company of 11 April 2019. He, again, requested the Court to quash the Decision PPP.no.183/2017 of the Basic Court in Prizren of 14 September 2017.
10. On 14 June 2019, the Court requested the Applicant to: a) complete the Court Referral Form, b) specify precisely the acts of the public authorities against which he is complaining; and c) to clarify his complaints according to the Constitution.
11. On 27 June 2019, the Court received the Referral Form and some decisions/documents from the Applicant which he had submitted at the Kosovo Post Office on 22 June 2019.

12. On 4 September 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

13. On 27 June 2017, Private Enforcement Agent S.K. through Order [P.nr.770/2017] approved the proposal of Regional Waste Company, RWC "Ekoregjioni" J.S.C. having its seat in Prizren (hereinafter: "Ekoregjioni" Company) for the enforcement of the authentic document - extract from the business books, for the payment of waste services, for the period from 2002 to 31 December 2014, against the Applicant, in a determined sum of money.
14. The Applicant submitted an objection against the Order [P.no.770/2017] of the Private Enforcement Agent, to the Basic Court in Prizren (hereinafter: the Basic Court) alleging that the debt he was charged with, was forgiven by Law No. 05 /L-43 on Public Debt Forgiveness.
15. On 14 September 2017, the Basic Court by Decision [PPP.nr.183/2017] rejected as unfounded the Applicant's objection against the Order [P.no.770/2017] of the Private Enforcement Agent, specifying that the Law on Debts Forgiveness, which the Applicant has referred to, is no longer in force.
16. The Applicant filed an appeal against Decision [PPP.no.183/2017] with the Court of Appeals by alleging, inter alia, *"violations of the legal norms governing the matter of debt prescription"*.
17. On 26 February 2018, the Court of Appeals by Decision [Ac.no.5357/2017] rejected as unfounded the Applicant's appeal and upheld the Decision of the Basic Court PPP.no.183 / 2017.
18. On an unspecified date, the Applicant submitted a revision to the Basic Court against Decision [Ac. no. 5357/2017] of the Court of Appeals.
19. On 5 May 2018, the Basic Court by Decision [PPP.no.183/2017], dismissed the Applicant's revision as inadmissible, after finding 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"*.
20. The Applicant filed an appeal with the Court of Appeals against Decision [PPP.nr.183/2017] of the Basic Court, by alleging *"violation of contested-enforcement procedure, erroneous determination of factual situation and erroneous application of substantive law"*.
21. On 25 February 2019, the Court of Appeals by Decision [AC.nr.3072 /18] rejected as unfounded the Applicant's appeal and upheld the Decision of the Basic Court [PPP.no.183/2017] of 5 May 2018, after having found that the Basic Court had correctly decided when dismissing the Applicant's revision, since according to Article 68, paragraph 1, of the Law on Enforcement Procedure, no revision is allowed in enforcement procedure.

Applicant's allegations

22. The Applicant has not specifically mentioned any right guaranteed by the Constitution which he alleges to have been violated by Decision [Ac. no. 3072/18] of the Court of Appeals, of 25 February 2019. He alleges that by Order [P.no.770 /2017] of the Private Enforcement Agent and by decisions of the regular courts his rights were violated contrary to the Law on Public Debt Forgiveness and the Law on Enforcement Procedure.
23. The Applicant alleges that the Basic Court by Decision [PPP.nr.183 /2017] of 14 September 2017, rejecting the Applicant's objection against the Order of Private Enforcement Agent [P.no.770/2017], has decided contrary to the law. He states that the debt that he was charged by the waste company "Ekoregjioni" for the period from 2002 to 2017 is not based upon any contract signed by the Applicant, but it ensued without valid invoices and according to the applicable law this debt has been prescribed. Therefore, he claims that he is being forced to pay a non-existent debt.
24. The Applicant further alleges "flagrant" violations of Law no. 04/L-139 on Enforcement Procedure, by calling upon Articles 37, 40 and 71 of Law No. 04/L-139. Therefore, based on the legal provisions cited above, he alleges that the Private Enforcement Agent and the Basic Court did not enforce the legal norms, and *"only caused damage"* to the Applicant who makes his existence by pension.
25. Lastly, the Applicant requests from the Court *"to apply all legal norms which have been violated"* by the Private Enforcement Agent and the regular courts and to order the Private Enforcement Agent to return all *"monetary assets received from the bank in a form of blockade"*.

Admissibility of Referral

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure
27. In this respect, the Court refers to paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

"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."

[...]

28. In addition, the Court also examines whether the Applicant has met the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 [Individual Requests], 48 [Accuracy of the Referral], which provide:

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.”

29. In assessing whether the Applicant meets the constitutional and legal requirements for reviewing the constitutionality of his Referral, the Court recalls that pursuant to Article 113 of the Constitution, individuals are authorized to refer to the Court violations by public authorities of their rights and freedoms guaranteed by the Constitution, after having exhausted the legal remedies provided by law. The same criterion is stipulated also in Article 47 of the Law.
30. Also, Article 48 of the Law specifically obliges the applicants to clarify precisely what rights and freedoms they claim to have been violated.
31. In the circumstances of the present case, the Applicant failed to specify precisely what rights and freedoms he alleges to have been violated by the challenged decisions and did not clarify his complaints according to the Constitution. Consequently, the Applicant's Referral does not meet the admissibility requirements established by the Constitution and the Law.
32. In such cases, of incomplete claims, which result to be such due to failure to fulfil the constitutional and legal requirements of admissibility, the Law and the Rules of Procedure define the procedure to be followed by the Court in order to provide an opportunity to the Applicant to complete and supplement his referral. In this respect, the Court recalls paragraph 4 of Article 22 [Processing Referrals] of the Law and Rule 32 (2) (e) and (g) [Filing of Referrals and Replies] of the Rules of Procedure:

Article 22
[Processing Referrals]

“[...]

4. If the referral [...] is not [...] 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;

[...].”

33. In this respect, the Court recalls that the Referral was received by the Applicant on 15 March 2019. Taking into account that the Referral was incomplete, on 14 June 2019, pursuant to paragraph 4 of Article 22 of the Law, the Court requested from the Applicant to supplement his Referral, by: a) completing the Court Referral Form; b) specifying precisely the acts of the public authorities against which he is complaining; and c) clarifying his complaints according to the Constitution.
34. The Applicant by his letter of 27 June 2019, despite having submitted the referral form of the Court and specified the judicial decisions in his case, failed to specify the constitutional rights which he alleges to have been violated by the public authorities and did not clarify his complaints according to the Constitution.
35. In this respect, and taking into consideration that the Applicant's Referral as submitted to the Court does not meet the admissibility requirements established by the Constitution and the Law, and that also despite the Court's request, the Applicant failed to supplement or clarify his referral, the Court, based upon its Rules of the Procedures, may summarily reject the Referral. In this respect, the Court refers to Rule 35 of the Rules of Procedure, which reads 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, [...].”

36. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have a direct interest, so that their claims

and allegations are effectively addressed by the Court. Therefore, the Court cannot take into account the Applicant's allegations, as his Referral is incomplete, and he has failed to clarify his complaints according to the Constitution (see, *mutatis mutandis*, the case of the Constitutional Court KIO3/15, Applicant: *Hasan Beqiri*, of 13 May 2015, paragraph 19, as well as the case of the Constitutional Court KIO7 / 16, Applicant: *Rifat Abdullahi*, of 14 July 2016, paragraph 22)

37. Hence, 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.
38. Therefore, the Court, pursuant to Article 113.7 of the Constitution, Article 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, Article 48 of the Law, and in accordance with Rule 35 (5) of the Rules of Procedure, on 4 September 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

President of the Constitutional Court

Bajram Ljatifi

Arta Rama-Hajrizi



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