



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

Pristina, 27 January 2014
Ref.no.:RK542/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI110/13

Applicant

Shaqir Përvetica

**Constitutional review of the Decision of the Supreme Court of Kosovo
Rev. no. 142/2013 of 14 June 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shaqir Përvetica from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is the Decision of the Supreme Court of Kosovo Rev. no. 142/2013 of 14 June 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision of the Supreme Court of Kosovo (Rev. no. 142/2013 of 14 June 2013) served on the Applicant 8 July 2013, and by which was terminated the property-legal dispute between the Applicant and Kosovo Police. The Applicant does not specify the Articles of the Constitution that have been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 23 July 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 August 2013, by the Decision of the President (no. GJR. KI110/13), Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI110/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 29 August 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo of the initiation of proceedings of the constitutional review of decisions under case no. KI110-13. By that notification the Constitutional Court requested from the Applicant to furnish it with proof of the date of receipt of the Judgment of District Court in Prishtina Ac. no. 1411/09 of 13 July 2012.
8. On 13 September 2013, the Supreme Court of Kosovo, respectively, the Municipal Court submitted the proof (a copy of the delivery note) that the Applicant received the impugned Judgment of the District Court in Prishtina on 27 August 2012.
9. Upon Court's notifications sent to the Applicant on 29 August 2013, no additional documents have been submitted by the Applicant within the legally envisaged time limit.
10. On 2 December 2013, after having reviewed the report of Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges Altay Suroy (presiding),

Snezhana Botusharova and Arta Rama-Hajrizi, recommended to the full Court the inadmissibility of the Referral.

Summary of the facts

11. The Applicant complains of a circumstance in which the Kosovo Police confiscated his hunting weapon, but he does not specify the date, the description of the circumstance nor the reasons that led to the confiscation of the hunting weapon.
12. On 8 September 2009, deciding upon a lawsuit of the Applicant, the Municipal Court in Prishtina issued Decision C. No. 1649/07 rejecting as unclear and incomplete the Applicant's lawsuit against the Kosovo Police in connection with the confiscation of the hunting weapon, with the reasoning that the lawsuit itself and the supplementation to the lawsuit, did not contain the subject matter of the dispute, legal basis, value of the dispute and who is the respondent in the litigation matter.
13. On 13 July 2012, the District Court in Prishtina deciding upon the appeal of the Applicant issued Decision Ac. no. 1411/2009 rejecting the appeal's request of the Applicant as unfounded and upholding the Decision of Municipal Court in Prishtina C.no.1649/07 of 8 September 2009, reasoning that:

"Taking into consideration this state of affairs, the panel deems that the allegations in the plaintiff's appeal that the lawsuit is clear because an order for return of the weapon to the owner has been attached to it are ungrounded and as such they are rejected, with the reasoning that the plaintiff by submission dated 07.04.2009 did not make a correction to the lawsuit, therefore the first instance court has correctly applied the provision of Article 102.3 of LCP, when it rejected the plaintiff's lawsuit."

14. On 14 June 2013, the Supreme Court of Kosovo, deciding upon Applicant's appeal, issued Decision Rev. No. 142/2013, rejecting Applicant's revision reasoning that it is belated because:

"From the receipt of delivery of the second instance court decision, it is concluded that the plaintiff received the Decision Ac. No. 1411/2009 of 13.07.2012 on 27.08.2012 and he filed the revision (appeal) on 5.10.2012"

Applicant's allegations

15. The Applicant considers that *"the Supreme Court has erred in calculating the time limit, because I have received Decision AC. No. 1411/09 of 13-07-2012 on 08-09-2012 and not on 27-08-2012, in order to corroborate that I submit the discharge list which confirms that on 27-08-2012 I was hospitalized"*.
16. The Applicant also alleges: *"My appeal (he refers to the revision-translator's note) has not been taken into consideration because the value of the lawsuit was not stated, thinking that the value would be determined in one of the sessions, but during these 9 years the court never invited me to take a statement from me."*

17. The Applicant also requests from the Constitutional Court: *“to oblige Kosovo Police to compensate the damage.*

To have my weapon returned or the damage compensated

Specification of the value

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|--|-----------------------|
| <i>1. Lawsuit-</i> | <i>80 euro</i> |
| <i>2. Weapon -</i> | <i>650</i> |
| <i>3. Medical certificate -</i> | <i>30</i> |
| <i>4. Weapon permit -</i> | <i>40</i> |
| <i>5. Certificate on training in hunting -</i> | <i>300</i> |
| <i>6. Appeal - 2001-</i> | <i>80</i> |
| <i>7. Lawsuit -II--2007-</i> | <i>80</i> |
| <i>8. Appeal -18.11.2009-</i> | <i>80</i> |
| <i>9. Court fee -03.10.12-</i> | <i>31</i> |
| <i>10. Appeal - 03-10-2012—</i> | <i>80</i> |
| <i>11. Court fee – 05-11-2012—</i> | <i>31</i> |
| <i>12. Appeal - 23.07.2013-</i> | <i>80</i> |
| <i>13. Fee- 22.07.2013-</i> | <i>31</i> |
| <i>Total</i> | <i>1.593</i> |
| <i>Annual interest</i> | <i><u>2.867,4</u></i> |
| | <i>4.460,40”</i> |

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate on Applicant’s Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
19. In the case, the Court has to specifically determine whether the Applicant has met the requirements of Article 113 (1) of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.
20. The Court refers to Article 113.7 of the Constitution, which provides that:

“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.”

21. The Applicant is authorized party and he has exhausted all legal remedies, provided by law.
22. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

“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.”

23. In addition, the Rule 36 (2) of the Rules provides that:

“(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

(d) when the Applicant does not sufficiently substantiate his claim.”

24. From the above, the Applicant claims that the Supreme Court has erred in calculating the time limit and rejected as belated their appeal (revision).
25. However, the Court considers that the Applicant failed to show how and why his right to a fair trial has been violated, nor he has substantiated his allegations of such violations.
26. On the other hand, the Court notes that from paragraph 8 of this Resolution, it can be clearly concluded that the Applicant's allegations for erroneous calculation of time limits are not accurate, since from the evidence submitted by the Supreme Court, respectively the Municipal Court in Prishtina of 13 September 2013 (a copy of the court's delivery note) it is undoubtedly determined that the Applicant received the impugned Judgment of the District Court in Prishtina on 27 August 2012, therefore none of his constitutionally guaranteed rights have been violated by acts of public authorities.
27. The mere fact that the Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of the Constitution or of the European Convention on Human Rights (see *Memetoviq v. Supreme Court of Kosovo* Kl 50/10, 21 March 2011; see *mutatis mutandis* *Mezour-Tiszazugi Tarsulat vs. Hungary*, ECHR Appl. No. 5503/02, of 26 July 2005).
28. In this regard, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *Avdyli v. Supreme Court of Kosovo*, Kl13/09, 18. juna 2010, see *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).
29. The Constitutional Court can only consider whether the evidence has been presented in such a manner, that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* authorities, Report of the European Commission on Human Rights, *Edwards v. United Kingdom*, App. No 13071/87 adopted on 10 July 1991).
30. In the present case, the Applicant has been provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Municipal Court and the District Court in Prishtina, and the Supreme Court of Kosovo. The interpretation of legal deadline for filing appeal (revision) against the Decision of the District Court is the matter that should be established by the Supreme Court of Kosovo and it

does not belong to the constitutional review of his rights to fair and impartial trial by the Court.

31. The Constitutional Court found that the pertinent proceedings were fair and they were not arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Application no. 17064/06 of 30 June 2009). In addition, there was nothing found in the Referral that would indicate that the Supreme Court of Kosovo lacked impartiality or that the proceedings were unfair.
32. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision.
33. Consequently, the Constitutional Court finds that the Applicant's allegations are not substantiated and they should be rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of Constitution, Article 48 of the Law, and Rule 36 (2) d) of the Rules of Procedure, in its session held on 2 December 2013, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. 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; and
- III. Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović

Prof. Dr. Enver Hasani

