



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

Prishtina, 08 July 2013
Ref. No.:RK442/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI52/13

Applicant

Halil Studenica

**Constitutional Review of
the Resolution of the District Court in Peja Ac.no.69/2012,
dated 12 April 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Halil Studenica from Peja (hereinafter, the Applicant), represented by the lawyer Abdylaziz Daci from Peja.

Challenged decision

2. The Applicant challenges the Decision of the District Court in Peja Ac.no.69/2012, dated of 12 April 2012 and served on the Applicant on 5 June 2012.

Subject matter

3. The Applicant alleges that the challenged decision violates the principle of equality before the law (Article 3 of Constitution) and the right to fair and impartial trial (Article 31 of Constitution).

Legal basis

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

Proceedings before the Constitutional Court

5. On 08 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 10 April 2013, the Court notified the Applicant that the Referral is registered under KI52/13, and requested from the Applicant to submit to the Court the Referral in the form provided by the Rules of Procedure of the Court.
7. On 16 April 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (Presiding), Kadri Kryeziu and Artta Rama Hajrizi.
8. On 25 April 2013, the Applicant filed Referral in the requested form.
9. On 14 May 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 12 March 2003, the Municipal Court in Peja rendered a final and binding Decision [C.br.404/02], thereby determining that the debtor obstructs the creditor (the Applicant) in free using the road registered as cadastral parcel no. 1571/4.
11. In the decision, the Court further ordered the debtor to stop all actions which obstruct the creditor in the free using the road, as well as to compensate to the Applicant the costs of proceedings in the amount of €780, within the time limit of 8 days from rendering the resolution under the threat of forced execution.
12. On 28 July 2003, the Applicant filed the proposal for execution of the decision with the Municipal Court in Peja.
13. On 14 November 2011, the Municipal Court in Peja [Decision [E.no.558/11] rejected as inadmissible the Applicant's proposal for execution of the Decision, because it was out of time, and terminated the proceedings.
14. On an unspecified date, the Applicant filed an appeal with the District Court in Peja against the Decision of the Municipal Court [E.no. 558/11].
15. On 12 April 2012, the District Court in Peja rejected the Applicant's appeal as ungrounded.
16. The Court in enacting clause states *„The first instance court found that the proposal for execution was filed on 08 September 2003, which is seen from the seal of receipt when the forced execution was permitted under number E.no.91/2003. In the case file there is also another copy of proposal for execution dated 26.07.2003, but the same does not contain the court seal. "[...] "Based on this verified factual situation the court of first instance decided as it was described more closely in the enacting clause of the challenged resolution and pursuant to provisions of Article 391 item (f) of the Law on Contested Procedure and Article 482 of the LCP, as well as Article 68 of the Law on Executive Procedure. In accordance with this, the legal stance of the first instance Court was entirely approved by the District Court."*
17. On 19 February 2013, the Applicant filed a request for protection of legality with the State Prosecutor of Kosovo.
18. On 25 February 2013, the State Prosecutor of Kosovo rejected the request of the Applicant, because *"all legal time limits for filing the request for protection of legality by the State Prosecutor have expired"*.

Applicant's allegations

19. The Applicant claims that the principles of equality before the law (Article 3 of the Constitution) and of impartiality of the court (Article 31 of the Constitution) were violated by an erroneous determination of facts, particularly by the judges of the second instance panel.
20. The Applicant alleges *„that someone has committed fraud by abusing official duty and the actors of corruption can be seen. The Applicant states that "because of all this, he addressed the presidents of the two courts trying to remove all obvious flaws. Waiting for them, the deadline, for filing the proposal to the Republic Prosecutor, has expired."*
21. The Applicant requests from the Court to *“conclude that the resolutions of now the former Municipal Court of Peja E.no. 558/11 dated 14 November 2011, as well as the Resolution of the District Court in Peja Ac. no. 69/2012 dated 12 April 2012, are unlawful and unconstitutional.”*

Admissibility of the Referral

22. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to Article 113.1. of the Constitution which provides that:

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

24. The Court also takes into consideration Article 49 of the Law, which provides that:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision (...).

25. The Court emphasizes that the legal requirement of the compatibility with the four month deadline for the submission of a Referral is intended to promote the principle of legal certainty and to assure the parties that cases that are under the jurisdiction of the Constitutional Court shall be examined within a reasonable time limit to protect the authorities and other interested parties from being in situations of uncertainty for a long period of time (*see: mutatis mutandis P.M. v. the United Kingdom Application no. 6638/03, of 24 August 2004*)

26. The Court notes that the State Prosecutor of Kosovo rejected the request of protection of legality because all legal time limits had been expired. The Court further notes that the challenged decision is dated 12 April 2012 and was served on the Applicant on 5 June 2012. The referral was submitted to the Constitutional Court on 08 April 2013. Thus, the referral is out of the four months deadline provided by Article 49 of the Law on the Constitutional Court.
27. Under these circumstances, the Applicant has not met the requirements for admissibility in terms of time limit in which the referral should be submitted to the Constitutional Court.
28. Therefore, the Applicant has not submitted the Referral in a legal manner, because it is out of time limit and the referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani