



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 14 July 2014
Ref. no.: RK676/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI71/14

Applicant

Asllan Bahtiri

**Constitutional review of the Judgment AA. no. 404/2013 of the Court of
Appeal of Kosovo in Prishtina, of 4 March 2014**

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Asllan Bahtiri (hereinafter: the Applicant), with residence in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment AA. no. 404/2013 of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014, which was served on the Applicant on 14 April 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment AA. no. 404/2013 of the Court of Appeal of Kosovo in Prishtina, of 4 March 2014, which according to the Applicant's allegations violated Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 May 2014, the President by Decision no. GJR. KI71/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI71/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 23 May 2014, the Court notified the Applicant and the Court of Appeal of Kosovo in Prishtina of the registration of Referral.
8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.
9. On 26 June 2014, the President of the Court, by Decision no. KSH. KI71/14, replaced Judge Snezhana Botusharova as Presiding Judge of the Review Panel and appointed Judge Altay Suroy as Presiding Judge. By same Decision, the President of the Court, replaced Judge Kadri Kryeziu as member of the Review Panel with Judge Snezhana Botusharova.
10. On 26 June 2014, having considered the report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi, recommended to the full Court the decision on the inadmissibility of Referral.

Summary of facts

11. On 4 February 2012, the Applicant applied in the competition, which was announced for the allocation of the apartments by the Municipality of Prishtina, which the Municipality rents to the families of martyrs, invalids and veterans of Kosovo Liberation Army (hereinafter: the KLA).
12. On 18 May 2012, the Committee for allocation of apartments of the Municipality of Prishtina to the families of martyrs, invalids and veterans of the KLA, published on the notice board the list of beneficiaries of the apartments, where the Applicant was not included.
13. On 21 May 2012, the Applicant filed appeal number 02.360-4965/1 against the "Priority List", published in the notice board.
14. On 2 July 2012, by the second instance Decision of the Committee for review of complaints no. 02-360-4965/2012 of 2 July 2012, the Applicant's complaint was rejected and the first instance decision of the Committee for assessment and selection of the beneficiary families of the apartments, dedicated to the families of martyrs and invalids was upheld.
15. On 12 November 2012, the Applicant filed a claim for annulment of the second instance Administrative decision with the Committee for review of complaints no. 02-360-4965/2012 of 2 July 2012.
16. On 1 October 2013, deciding on the Applicant's claim, the Basic Court in Prishtina, Department of Administrative Matters, by Judgment A. no. 1332/2012 of 1 October 2013, rejected as ungrounded the Applicant's statement of claim, by which he requested the annulment of the Decision of the respondent, the Municipality of Prishtina, the Committee for Allocation of Apartments, no. 02-360-4965/2012 of 2 July 2012, with the following reasoning:

"... From the evidence, taken by the Committee during the visit to the claimant and the evidence submitted in the application, they found that the latter did not meet the criteria for the allocation of the apartment as he did not gain sufficient number of points since he is single and did not gain sufficient points to be ranked in the list of the beneficiaries of the apartments..."
17. Against the Judgment of the Basic Court in Prishtina, Department of the Administrative Matters, A. no. 1332/2012 of 1 October 2013, the Applicant timely filed appeal with the Court of Appeal of Kosovo in Prishtina.
18. On 4 March 2014, the Court of Appeal of Kosovo in Prishtina, by Judgment AA. no. 404/2013 rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Basic Court in Prishtina, Department of the Administrative Matters A. no. 1332/2012 of 1 October 2013, with the following reasoning:

"... This court approves in entirety as correct and legally grounded the legal stance of the first instance court, because the challenged Judgment does not contain substantial violation of the provisions of the Law on Administrative

Conflict, which the second instance court investigates ex officio pursuant to Article 49 of the LAC. In relation to the claimant's appealed allegations that the first instance court has violated the provisions of the LAC, they are not grounded because the court has reviewed the claim, it initially sent the claim to the respondent's representative for a response to the claim, then it scheduled the main hearing session, it administered sufficient evidence, which means that during its assessment the first instance court did not violate the provisions of the LAC..."

Applicant's allegations

19. The Applicant alleges that *"his right to judicial protection of rights under Article 54 of the Constitution has been violated, because the courts have not correctly assessed the Applicant's request"*.
20. Based on what was submitted in the Referral, the Applicant requests from the Constitutional Court of the Republic of Kosovo to:

"Assess that my right of allocation of the apartment has been violated both by Prishtina Municipality and the courts".

"The Regulation was not respected and the legality was not assessed by the courts".

Admissibility of Referral

21. The Court observes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

"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".
23. The Court refers to Article 48. of the Law, which 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."
24. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

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

...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights “.

25. Having reviewed the Applicant's allegations for violation regarding the erroneous application of the material law and Regulation of the Municipality, regarding the manner of assessment, the Constitutional Court emphasizes that it is not a court of appeal, when reviewing the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1]).
26. The Judgment of the Basic Court in Prishtina, Department of the Administrative Matters, A. no. 1332/2012 of 1 October 2013 and the Judgment of the Court of Appeal of Kosovo in Prishtina, AA. no. 404/2013 of 4 March 2014, in their reasoning explain in details the reasons for application of relevant rules of the procedural and substantive law as well as the manner of assessment according to the Regulation in the process of allocation of the apartments and provide responses to the these Applicant's allegations.
27. The Constitutional Court notes that the Applicant has not provided any *prima facie* evidence which would point to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).
28. In the present case, the Applicant has been provided numerous opportunities to present his case and challenges the interpretation of the law, which he considers as being incorrect, before the Committee of the Municipality of Prishtina for allocation of the apartments, the Committee for Review of Complaints, the Basic Court in Prishtina and the Court of Appeal in Prishtina. After having examined the proceedings in their entirety, the Constitutional Court has not found that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
29. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged Judgment.
30. It follows that the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, on 26 June 2014, 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



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani