



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

Prishtina, 19 November 2015
Ref. no.: RK 860/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI86/15

Applicant

Armond Morina

**Constitutional review of Decision Rev. E. no. 57/2014 of the Supreme
Court of 17 November 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Armond Morina residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision, E. Rev. no. 57/2014, of the Supreme Court, of 17 November 2014, by which the Supreme Court rejected the Applicant's revision as ungrounded and upheld the Decision of the Court of Appeal.
3. This decision was served on the Applicant on 26 February 2015.

Subject matter

4. The subject matter is the request for constitutional review of the challenged decision, which, allegedly, violated Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental freedoms (hereinafter: ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 25 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 August 2015, the President of the Court by Decision GJR. KI86/15 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI86/15 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
8. On 17 August 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. The Applicant is the owner and director of the production company "Morina Films".
11. The Applicant, namely his production company, in 2006, requested from the Ministry of Culture, Youth and Sports of Kosovo (hereinafter: MCYS) financial assistance for the implementation of the film project "Mysafir në sofër".

12. On 19 September 2008, the MCYS signed the contract with the Applicant. Based on this contract, the MCYS as a donor was obliged to subsidize the film project "*Mysafir në sofër*".
13. On 20 October 2008, the MCYS transferred the funds allocated for the implementation of the first stage of the film project "*Mysafir në sofër*".
14. On 27 August 2010, the MCYS informed the Applicant that, based on the findings of the MCYS Audit, and the report of the MCYS Commission, it was determined that the funds allocated for the implementation of the film project "*Mysafir në sofër*" have not been spent in accordance with the contract, therefore, the further financing of this project is terminated, thereby ordering the Applicant to return the funds, paid earlier for the implementation of the first stage of the project, to the Kosovo budget .
15. After the abovementioned notification was served on the Applicant, the MCYS filed a lawsuit with the District Commercial Court in Prishtina, with a statement of claim that the Applicant (Morina Films) returns the funds for the implementation of the first stage of the film project "*Mysafir në sofër*".
16. On 28 February 2012, the District Commercial Court in Prishtina (Judgment II. C. no. 13/2011) approved as grounded the lawsuit of the MCYS, and ordered the Applicant to return to MCYS the funds, including the legal interests and the contested procedure costs.
17. On 21 May 2012, the Applicant, dissatisfied with the abovementioned Judgment, filed an appeal with the District Commercial Court in Prishtina.
18. On 22 August 2012, the District Commercial Court in Prishtina rejected the Applicant's appeal as out of time.
19. Against the Decision of the District Commercial Court in Prishtina, the Applicant filed an appeal with the Court of Appeal.
20. On 20 September 2012, the Applicant submitted the Referral to the Court. This Referral was registered under the registration number KI16/13.
21. On 16 April 2013, the Applicant requested the Court to suspend the proceedings in the case KI16/13 until the final decision of the regular courts is rendered.
22. On 14 June 2014, the Court renders the decision on striking out the Referral KI16/13, as in the aforementioned set of circumstances has not found any reason to decide the Referral.
23. On 18 July 2014, the Court of Appeal [Decision Ae. no. 412/2012] rejected the Applicant's appeal as ungrounded and upheld the Decision of the District Commercial Court in Prishtina.
24. Dissatisfied with the Decision of the Court of Appeal, the Applicant filed a revision with the Supreme Court.

25. On 17 November 2014, the Supreme Court [Decision E. Rev. no. 57/2014] rejected as ungrounded, the request for revision of the Applicant.

Applicant's allegations

26. The Applicant alleges that the challenged decision violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.
27. The Applicant requests the Court:

“To annul the courts’ decisions, namely the decision of the Supreme Court and to remand the case for retrial and reconsideration due to violation of the rights guaranteed by the Constitution and the Convention [...]”.

Admissibility of the Referral

28. First of all, in order to be able to adjudicate the Applicant's Referral, the Court should examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. In this respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of the Law

“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”.

Rule 36 of the Rules of Procedures

[...]

(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

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

30. As stated above, the Applicant alleges that the decision of the Supreme Court, the decision of the Court of Appeal and the judgment of the District Commercial

Court were rendered in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

31. In fact, the Applicant alleges, in general, referring to the decisions of the regular courts, that he was not afforded “*a fair and impartial trial*” before the regular courts.
32. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral. He only mentions the abovementioned articles of the Constitution and the ECHR, without further explanation about how the violations occurred.
33. In this regard, the Court notes that the District Commercial Court rejected the Applicant's appeal against the first instance judgment, considering that the deadline for filing such an appeal has expired. Nonetheless, the Applicant did not provide any evidence in support of his allegations.
34. The Court also notes that the Court of Appeal reasoned its decision regarding the Applicant's allegation “*Due to the fact that Judgment C. no. 13/11, of 28.02.2012 was received by the authorized person of the respondent on 11.05.2012, while the appeal was filed on 21.05.2012, after the expiry of the time limit of 7 days, provided by Article 509.1, under c) of the LCP, the Court of Appeal of Kosovo found that the challenged judgment does not violate the law to the detriment of the respondent and that it is fair and grounded*”, holding that the District Commercial Court correctly applied the substantive law, when it rejected the Applicant's appeal against the first instance judgment.
35. In addition, the Court notes that the Supreme Court rejected the Applicant's request for revision as ungrounded, and upheld in entirety the reasoning of the District Court and the Court of Appeal.
36. The Court considers that the proceedings before the District Court, Court of Appeal and Supreme Court were fair and that the decisions were thoroughly justified and reasoned.
37. Therefore, the Constitutional Court concludes that the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia*, *Edwards v United Kingdom*, no. 13071/87, Report of the European Commission of Human Rights of 10 July 1991 and, *mutatis mutandis*, *Shub v Lithuania*, no. 17064/06, ECHR, decision of 30 June 2009).
38. In addition, the Applicant has not accurately explained how and why the challenged decisions violate the rights and freedoms guaranteed by the Constitution, nor did he give evidence to justify the allegation of such violation.
39. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the public authorities, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or other public authorities is to interpret and apply, when is possible, the pertinent rules of both procedural and substantive law (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case: KI70/n of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
41. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECHR, Decision of 31 May 2005) and did not specify how the Article of the Constitution and Article of ECHR referred by him, support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
42. In sum, the Court concludes that the Applicant's allegations of a violation of the right to fair and impartial trial are ungrounded, are not proven and therefore, manifestly ill-founded.
43. Based on the foregoing reasons, the Court considers that, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 7 July 2015, unanimously

DECIDES

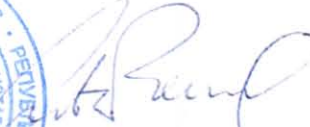
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court



Robert Carolan



Arta Rama-Hajrizi