



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

Prishtina, 2 February 2015  
Ref. No.: RK765/15

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI97/14**

Applicant

**Velibor Jokić**

**Constitutional review of the Decision of the Court of Appeals of Kosovo,  
PN. no. 610/2013, dated 23 October 2013**

**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 Mr. Velibor Jokić, resident in Serbia.

## **Challenged decision**

2. The Applicant challenges the Decision of the Court of Appeals of Kosovo rejecting his indictment as subsidiary prosecutor, PN.no. 610/2013, dated 23 October 2013. This decision was served on the Applicant on 04 February 2014.

## **Subject matter**

3. The Applicant alleges that the aforementioned Decision of the Court of Appeals violated his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant also invokes Articles 6, 13 and 14 of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 1 of Protocol 1 to the ECHR.

## **Legal basis**

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

## **Proceedings before the Constitutional Court**

5. On 04 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 04 July 2014, the President appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 18 November 2014, Court notified the Applicant of the registration of the Referral. On the same date, a copy of the Referral was communicated to the Court of Appeals of Kosovo.
8. On 08 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

## **The facts of the case**

### ***As to the Applicant's property claims***

9. It appears from the file that the Applicant claims ownership of two parcels of land located in the Municipality of Viti. Apparently, the Applicant's ownership was confirmed by the Municipal Court of Vitina in 1994.

10. On 11 March 2004, the Applicant submitted a petition to the Directorate of Urbanism, Cadastre and Environmental Protection of the Municipality of Viti requesting registration of his ownership of these two parcels in the municipal cadastre. However, this request was not implemented. The Applicant requested the Municipal Court of Viti to force the execution of his request.
11. On 11 January 2008, the Municipal Court of Viti apparently approved the request for forced execution. However, on 24 September 2008, the Director of Administration of Viti Municipality, X. S., apparently rejected the Applicant's request to register the properties. It appears that, on 06 March 2008, with Decision no. 01-013/838, the Municipal Assembly of Viti had ordered the temporary suspension of the transfer of registration of properties that were currently registered in the names of Socially-Owned Enterprises or Publicly-Owned Enterprises to become registered in the names of private individuals.
12. The Applicant has apparently undertaken various legal steps against the refusal to register the properties in his name. It appears that these various proceedings are still pending, but those proceedings are not the object of this referral.

### ***As to the Applicant's criminal prosecution***

13. In 2009, the Applicant filed criminal charges against the Director of Administration of the Municipality of Viti. The Applicant constituted himself as "subsidiary prosecutor" under Chapter V of the Kosovo Code of Criminal Procedure (UNMIK/REG/2003/26, as amended by Law no. 03/L-003 of 06 November 2008). The Applicant charged the Director of Administration with the criminal offense of "Abusing official position or authority", under Article 339, paragraph 1, of the Criminal Code of Kosovo (UNMIK/REG/2003/25, as amended by Law no. 03/L-002 of 06 November 2008).
14. On 12 October 2012, by decision UO.no.48/2009, the Municipal Court in Viti ruled to reject the indictment of the Applicant against the Director of Administration because the action of which he was accused did not constitute a criminal offense. The Municipal Court considered that the accused Director of Administration was merely implementing the decision of the Municipal Assembly of 06 March 2008.
15. The Applicant submitted an appeal against this Ruling to the full panel of the court. The Applicant argued that he had submitted his request for registration of the properties on 11 March 2004, whereas the Municipal Assembly of Viti had not decided to temporarily suspend the registration of properties until 06 March 2008. The Applicant alleged that the failure to register the properties in his name during the four years prior to the decision of the Municipal Assembly constituted the criminal offense of abuse of position.
16. On 15 May 2013, by decision UO. no. 48/2009, the Basic Court of Gjilan, Branch in Viti, ruled to reject as ungrounded the Applicant's appeal. The Basic Court considered that the Director of Administration was simply executing the decision of the Municipal Assembly and had not in any other way abused his position or authority. The Applicant submitted an appeal against this ruling.

17. On 23 October 2013, by decision PN. no. 610/2013, the Court of Appeals ruled that the Applicant's appeal was not grounded. The Court of Appeals stated that:

*“This court found that, in this particular case, the appeal was not grounded and that the first instance court acted correctly when it rejected as not grounded the appeal of [the Applicant], which proposed the annulment of the Ruling of the Municipal Court in Viti, [...] because [the Director of Administration], in the quality of responsible person, had acted pursuant to the decision of the Municipal Assembly of Viti [...], which had temporarily suspended the transfer of immovable properties registered under the name of former public enterprises under the name of private persons.”*

### **Applicant's allegations**

18. The Applicant claims a violation of his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution. The Applicant also invokes Articles 6, 13 and 14 of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 1 of Protocol 1 to the ECHR.
19. The Applicant alleges that his right to the peaceful enjoyment of his property has not been protected by the public authorities and the courts. Furthermore, he alleges that, by rejecting the indictment of his subsidiary prosecution, the courts have denied to the Applicant the right of access to justice.
20. In addition, the Applicant alleges that the courts have failed to provide reasons for their decisions, in violation of the Applicant's right to a fair trial. He claims that he was denied the right to equality with the other party to the proceedings and that he has not benefitted from a trial within a reasonable time.

### **Admissibility of the Referral**

21. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine 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.
22. The Court has also to determine whether the Applicant has met the requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law. Article 113, paragraph 7 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.”*

23. The final decision on the Applicant's case is the Ruling of the Court of Appeals PN. no. 610/2013 dated 23 October 2013, against which no further appeal is possible. As a result, the Applicant has shown that he has exhausted all legal remedies available under the law.

24. The Applicant must also prove to have met the requirements of Article 49 of the Law concerning the submission of the Referral within the legal time limit. It can be seen from the case file that the final decision on the Applicant's case is the Ruling of the Court of Appeals PN. no. 610/2013 dated 23 October 2013, which was served on the Applicant on 04 February 2014, whereas the Applicant submitted the Referral with the Court on 04 June 2014, meaning that the Referral has been submitted within the four month deadline prescribed by the Law and Rules of Procedure.

***As to the access to judicial remedies***

25. The Applicant alleges that he has been denied access to judicial remedies for the protection of his property rights. The Applicant claims that he has been denied his right to the free enjoyment of his property as protected by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR.
26. The Court notes that various legal and judicial procedures are mentioned in the file, but that none of these proceedings are explained or elaborated. No copies of decisions in such proceedings are included in the file. Indeed, it appears that at least some of these proceedings may still be pending. Furthermore, the Court notes that the proceedings which are the object of this Referral have no bearing on the Applicant's right to the free enjoyment of his property, but instead concern a criminal accusation brought against a public official for abuse of position.
27. As such, the Court considers that the Applicant has failed to substantiate on constitutional grounds his claims in relation to his right to judicial protection of his rights and to a legal remedy, and did not provide any evidence that his rights and freedoms have been violated in this regard by the regular courts.
28. Rule 36 (2) (d) of the Rules foresees that "*The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: [...] the Applicant does not sufficiently substantiate his claim;*"

***As to the right to a fair trial and the enjoyment of property***

29. The Applicant claims that he has not benefitted from a fair trial, in violation of Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.
30. Article 31 of the Constitution, in the relevant part of its second paragraph, provides that,  
  
*"Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges [...]"*
31. Article 6, paragraph 1, of the ECHR, in its relevant part, provides that,



*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing [...]”*

32. Furthermore, Article 53 of the Constitution provides that,

*“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

33. The Court notes that the Applicant’s complaints in relation to a fair trial relate exclusively to criminal proceedings against a third party in which the Applicant had constituted himself as subsidiary prosecutor. The Applicant’s indictment of the third party was rejected by the trial court and by the Court of Appeals on the grounds that the accusations against this third party did not constitute a criminal act.

34. The Court notes that, if these criminal proceedings had been allowed to continue, the outcome of these criminal proceedings could only have resulted in a determination of the criminal charges brought against this third party. There were no criminal charges brought against the Applicant.

35. When reading Article 31 of the Constitution, in the light of Article 6, paragraph 1, of the ECHR, the Court finds that the phrase *“as to any criminal charges”*, as used in Article 31, must be understood to mean *“as to any criminal charges brought against the Applicant”*. As such, the Applicant’s claim a violation of his right to a fair trial could not come within the scope of the heading *“as to any criminal charges”* contained in Article 31 of the Constitution.

36. Furthermore, with respect to rights and obligations, the Court recalls the Judgment of the European Court of Human Rights in the case of *Perez v. France* (no. 47287/99, Judgment of 12 February 2004), which states, in paragraphs 70 and 71, that,

*“70. [The European Court of Human Rights] notes that the Convention does not confer any right, as demanded by the applicant, to “private revenge” or to an actio popularis. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim’s exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” [...].*

*71. The [European] Court concludes that a civil-party complaint comes within the scope of Article 6 § 1 of the Convention, **except in the cases referred to in the previous paragraph.** [Emphasis added]”*

37. In contrast with the case of *Perez v. France*, the Applicant was not a civil party to a criminal prosecution, but had himself instituted criminal proceedings as subsidiary prosecutor. It appears from the file that that these criminal proceedings did not include a claim for compensation for any damages suffered by the Applicant. Furthermore, these criminal proceedings could not have influenced the outcome of any other legal proceedings regarding the Applicant’s

property rights. As such, the outcome of the criminal prosecution of the Director of Administration of the Municipality of Viti would not have affected the Applicant's enjoyment of any rights, nor would it have determined any obligations of the Applicant.

38. As quoted above from the Judgment of *Perez v. France*, the ECHR does not provide a right to have a third party prosecuted or sentenced for a crime. The Constitution also does not confer such a right.
39. Given that the proceedings complained of do not concern a determination of any rights and obligations of the Applicant, it follows that the Applicant's allegation of a violation of his right to a fair trial also does not come within the scope of the heading "*as to any rights and obligations*", contained in Article 31 of the Constitution.
40. In conclusion, the Court finds that the Applicant's complaints in relation to the criminal proceedings against the Director of Administration of Viti Municipality do not come within the scope of the right to a fair trial under Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.
41. In addition, the Court notes that the Applicant complains that his right to the free enjoyment of his property was violated because of the refusal of the regular courts to allow his subsidiary prosecution of the Director of Administration of Viti Municipality. However, as outlined above, these proceedings had no bearing whatsoever on the Applicant's property rights.
42. As such, the Court finds that the Applicant's allegation of a violation of his property rights does not come within the scope of Article 46 of the Constitution and Article 1 Protocol 1 of the ECHR, because the enjoyment of his property rights could not in any way have been affected by these proceedings.
43. Therefore, the Court considers that the Applicant's complaints in relation to his right to a fair trial and to his right to protection of property are incompatible *ratione materiae* with the Constitution.
44. Rule 36 (3) (e) of the Rules foresees that "*A Referral may also be deemed inadmissible in any of the following cases: [...] the Referral is incompatible ratione materiae with the Constitution.*"

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (2) (d), 36 (3) (e) and 56 (b) of the Rules of Procedure, on 8 December 2014, unanimously:

### **DECIDES**

- I. TO DECLARE 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;

IV. TO DECLARE this Decision effective immediately

**Judge Rapporteur**

Arta Rama-Hajrizi



**President of the Constitutional Court**

Prof. Dr. Enver Hasani