



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

Prishtina, on 5 May 2016
Ref. no.:RK933/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI95/15

Applicant

Xhevat Berbati

Constitutional Review of the Decision, AC. No. 4312/2014, of the Court of Appeal of the Republic of Kosovo, of 27 February 2015

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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Xhevat Berbati, residing in Nabërgjan, municipality of Peja (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Decision (AC. No. 4312/2014, 27 February 2015) of the Court of Appeal of the Republic of Kosovo (hereinafter, the Court of Appeal), which the Applicant has received on 1 April 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision which rejected the Applicants objection filed against the Decision (E. No. 1023/2013 of 23 December 2013) of the Basic Court in Peja concerning an enforcement procedure permitted to be initiated against the Applicant and his guarantors.
4. The Applicant alleges that the regular courts have violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely “*Article 31 [Right to Fair and Impartial Trial] paragraph 1; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights].*”

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 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

6. On 10 July 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, Court).
7. On 19 August 2015 the President by Decision, GJR. KI95/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President by Decision, KSH. KI95/15 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
8. On 18 January 2016 the Court informed the Applicant of the registration of the Referral. On the same date the Court sent a copy of the Referral to the Court of Appeal.
9. On 16 March 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

10. On 27 February 2012 the Applicant signed a loan agreement, as an overdraft authorization, with Banka Ekonomike SH.A (hereinafter, the Bank). On the same date, the Applicant, his guarantors and the Bank signed a mortgage agreement as a means of securing the payment of the loan.

11. The loan had been disbursed to the Applicant. The latter had paid the installments as agreed with the Bank until a certain date. Following some financial difficulties, the Applicant started being late with the scheduled payments and at some point stopped paying the agreed installments.
12. Following these events and after the rescheduling of the loan failed to produce any results, the Bank, in its capacity as creditor, filed a proposal for enforcement against the Applicant and his guarantors, in their capacity as debtor(s), with the Basic Court in Peja. The Bank requested from the Basic Court in Peja to oblige the Applicant and his guarantors to pay the amount of the remaining debt or alternatively authorize the selling of the mortgage left by the guarantors as a means of paying the remaining debt.
13. On 23 December 2013 the Basic Court in Peja (Decision, E. No. 1023/203) approved the proposal for enforcement based on the loan contract signed by the Applicant and the Bank and the mortgage contract signed by the Applicant, his guarantors and the Bank.
14. Against the abovementioned decision, the Applicant and his guarantors filed an objection with the Court of Appeal requesting from the latter to annul the decision of the Basic Court and suspend the enforcement procedure.
15. On 27 February 2015 the Court of Appeal (Decision, AC. No. 4312/2014) rejected the objection of the Applicant and his guarantors as ungrounded and confirmed the decision of the first instance court. The Court of Appeal held that:

“The Court rejected in its entirety the objections of the debtors [the Applicant and his guarantors] as ungrounded, reasoning that they have mainly submitted the objection to prolong the enforcement procedure because the reasons stated in the objections do not coincide with any of the reasons that would prohibit the enforcement allowed by the court set out in provision of Article 171 of the LEP [Law on Enforcement Procedure] [...]. The allegations put forth on the appeal by Xhevat Berbati are considered by the Court as ungrounded, because the first instance court did not erroneously apply the substantive law of which this Court takes care ex officio.”

Applicant’s allegations

16. The Applicant alleges that the Court of Appeal has violated his right to fair and impartial trial, right to effective legal remedies and right to judicial protection of rights as guaranteed by the Constitution.
17. In supporting the alleged violation under Article 31 paragraph 1 of the Constitution, the Applicant claims that *“despite his continuous request to get hold of his account history [...] the Bank has never provided him with information in respect of his transactions [...].”*

18. In general, the Applicant also states that the loan agreement could not have been fulfilled as a consequence of his financial difficulties which ultimately obliged the contracting parties to make another agreement. However, according to the Applicant, *“all proposals of the creditor [the Bank] were unbearable for the debtor [the Applicant]”*.
19. The Applicant further claims that the Bank *“has collected an interest of 150 % more than the monthly installment, a fact which [he claims] can be confirmed from the account history of 6 June 2015.”*

Assessment of the admissibility of the Referral

20. The Court first examines whether the Applicants have met the requirements of admissibility as foreseen by the Constitution and further specified by the Law and Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

[...]

7. 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.”

22. The Court also notes Article 48 of the Law, which states that:

“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 Court refers to Rule 36 (2) (d) of the Rules of Procedure which provides that:

*“(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.”*

24. As mentioned above the Applicant alleges that the Decision (AC. No. 4312/2014, of 27 February 2015) of the Court of Appeal was rendered in violation of Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; and Article 54 [Judicial Protection of Rights] as guaranteed by the Constitution.

25. With regards to *“legal remedies”* and *“judicial protection of rights”* the Applicant merely referred to the respective articles of the Constitution without providing any further reasoning as to how and why such rights have been violated by the Court of Appeal.

26. With regards to the right to “*fair and impartial trial*”, the Applicant did not claim any violation that might have been done by the Court of Appeal or the Basic Court in Peja. Instead, the Applicant referred to some violations allegedly committed by the Bank such as the interest rate being too high and him not receiving his account history upon his request. He failed to provide any reasoning as to how and why his right to fair trial has been violated by the regular courts.
27. The Court notes that the Basic Court in Peja and the Court of Appeal have reasoned their decisions referring to the provisions of the law in force when rejecting the Applicants’ objection to the enforcement procedure. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
28. In relation to this, the Court recalls the reasoning of the Court of Appeal in answering the Applicants’ allegation of violations of the law allegedly committed by the Basic Court in Peja when it rejected his objection to the enforcement procedure. The Court of Appeal stated that: “[...] *the conclusion of the first instance court [...] is grounded and supported on the case file and legal provisions, therefore the challenged decision contains complete and convincing reasons. [...] the first instance court did not erroneously apply the substantive law [...].*”
29. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
30. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply 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 KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant does not agree with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution.
31. The Court notes that the Applicant had the opportunity to present his case before the regular courts. The issue of the rightfulness of the enforcement procedure has been extensively addressed by the Basic Court and the Court of Appeal. The latter has responded to all the claims of the Applicant as to whether the enforcement procedure could be prolonged or not. The Court of Appeal noted that the Applicant did not substantiate his objection with respect to wrong application of the material law. The applicant had merely mentioned it but did not provide any arguments to that end. He was mainly interested in prolonging the enforcement procedure, which the Court of Appeal found no reasons to approve.

32. In this respect, it is important to note that the Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
33. In relation to this, the Court notes that the reasoning referring to the objection of the Applicant in respect of the enforcement procedure in the Judgment of the Court of Appeal is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Basic Court in Peja have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
34. For the foregoing reasons, the Court considers that the Applicant has failed to substantiate his claims as to how and why his rights have been violated by the Court of Appeal.
35. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Rules 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 (7) of the Constitution, Articles 48 of the Law and Rules 36 (2) (d) and 56 (2), on 16 March 2016, 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Arta Rama-Hajrizi