



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 20 October 2014
Ref. No.: RK712/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI104/14

Applicant

Agron Çerreti

**Constitutional review of unspecified decisions of the Supreme Court and
the Court of Appeals and Judgment P. no. 88/2012 of the Municipal
Court in Gjilan**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Agron Çerreti, permanently residing in Prizren.

Challenged decision

2. The Applicant challenges unspecified decisions of the Supreme Court and the Court of Appeals and the Judgment P. no. 88/2012 of the Municipal Court in Gjilan, however, none of them was submitted to the Court.

Subject matter

3. The subject matter is the constitutional review of decisions as stated in the title herein. In general, the applicant complains against decisions of regular courts alleging that they have violated his rights guaranteed by the Constitution.

Legal basis

4. The legal basis of the present case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 22 and 47 of the Law No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 20 June 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 July 2014, the President of the Court, by Decision No. GJR. KI104/14, appointed Judge Arta Rama-Hajrizi, as Judge Rapporteur and on the same date by Decision No. KSH. KI104/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 15 July 2014, the Court notified the Applicant on the registration of the Referral and requested him to supplement it with relevant documentation.
8. On 17 September 2014, the President of the Court replaced the member of the Review Panel, Judge Robert Carolan with Judge Snezhana Botusharova.
9. On 17 September, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissible of the Referral.

Summary of facts

10. The Applicant stated that he was accused by the Municipal Prosecution Office in Gjilan (hereinafter: MPGJ), of the criminal offence of fraud.
11. The Applicant stated that, within the legal time limit, he had submitted an appeal against the punitive order.
12. The Municipal Court in Gjilan (Judgment P. no. 88/2012), following the main trial session, found the Applicant guilty, based on the indictment for the criminal offence of fraud, whereby it imposed a fine at the amount of 700

Euros. However, the Court notes that the Applicant has not submitted this decision of the Municipal Court of Gjilan to the Court.

13. The Applicant exercised his right to appeal with the Court of Appeals, against the Judgment of the Municipal Court in Gjilan, alleging that this court rendered a decision violating his rights provided by law.
14. The Court of Appeals in Prishtina, according to the statements of the Applicant, rendered a decision whereby it rejected his appeal and approved the request of the MPGJ regarding the replacement of the fine of 700 Euros with imprisonment of 4 (four) months. The Court also notes that the Applicant has not submitted this decision of the Court of Appeals to the Court.
15. Against the decision of the Court of Appeals, the Applicant submitted a request for protection of legality with the Supreme Court regarding the violation of provisions of the CPC, namely due to not applying Article 47 of the CPC, where the Applicant alleges that based on this Article, imprisonment of a duration of not more than 6 (six) months, may be replaced with a fine.
16. The Supreme Court rejected the request of the Applicant for protection of legality, reasoning that neither the Applicant nor his defence council requested to attend the main hearing of the Court of Appeals. Also this decision of the Supreme Court was not submitted to the Court by the Applicant

Applicant's allegation

17. The Applicant alleges that the regular courts violated his rights guaranteed by the applicable law and the Constitution, due to the following reasons: 1) the Court of Appeals changed, upon the request of the Municipal Prosecutor Office in Gjilan, the punishment by a fine of 700 Euros with imprisonment of a duration of 4 (four) months, although the MPGJ did not request it from the Municipal Court; 2) due to the fact that the Court of Appeals did not apply Article 47 of the CPC, relating to the option of replacing the imprisonment with a fine; and 3) due to the fact that the Supreme Court rejected his request for protection of legality, reasoning that neither the Applicant nor his defense council requested to attend the main hearing of the Court of Appeals to request the change of punishment.
18. Apart from violation of legal provisions, the Applicant did not specify any violation of rights guaranteed by the Constitution.

Assessment of the admissibility

19. First of all, the Court examines whether the Applicant has fulfilled the requirements foreseen by the Constitution and further specified in the Law and the Rules of Procedure of the Court.
20. In this respect, the Court refers to Article 48 of the Law, which provides 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.”

21. In addition, the Rule 36 (1) c) of the Rules of Procedure, provides that:

(1) “The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded.

22. Furthermore, the Rule 36 (2) of the Rules of Procedure, provides that:

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

a) The Referral is not prima facie justified;

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

[...]

23. In the present case, the Court notes that the Applicant alleges that the regular courts violated his rights provided by provisions of applicable law, by not providing him the opportunity to replace the sentence of imprisonment with a fine. With regard to the allegation for violation of rights guaranteed by the Constitution, the Applicant has not mentioned the specific provision of the Constitution that had been violated.
24. In this present case, the Court cannot review the constitutionality of decisions of the regular courts, since the Applicant did not submit the challenged decisions with the Court. Therefore, the Court cannot take into consideration only the allegations and statements of the Applicants, if such allegations and statements are not supported by substantive arguments and evidence.
25. The Applicant was requested and has been given sufficient time to supplement his Referral with the necessary documentation, nevertheless, the Court did not receive any decision of the regular courts, whereby it could have reviewed the constitutionality thereof.
26. The Court considers that the Applicant has not shown a *prima facie* case in order for the court to assess whether the admissibility procedural requirements have been satisfied, whether the Applicant has exhausted all effective legal remedies, whether the Referral has been submitted within the time limit of 4 (four) months and whether the allegations of the Applicant on violation of his rights guaranteed by the Constitution present an evidence-based ground to assess the merits of the Referral, as it is not in possession of such decisions in order to assess them.
27. The Court cannot become a fact-finding Court and request from other judicial authorities the Applicant’s case files, requesting them by name and surname. If

the Court finds that a Referral is not completed with the relevant documentation, it will request from the Applicant(s) to submit those documents within a legally set time limit, otherwise the Court will decide only based on the case files. The burden of proof lies with the parties which fail to satisfy the requirements laid down by the Constitution, the Law and the Rules of Procedure.

28. In sum, the Court concludes that, pursuant to Article 48 of the Law and the Rule 36 (1) c) of the Rules of Procedure, the Referral of the Applicant is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (2) a) and b) and 56 (2) of the Rules of Procedure, on 17 September 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