



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

Prishtina, 5 January 2015
Ref. no.:RK743/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI105/14

Applicant

Ramiz Ukaj

**Constitutional review of Notification KMLC no. 45/14 of the State
Prosecutor of the Republic of Kosovo,
dated 2 June 2014**

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. This referral is submitted by Mr. Ramiz Ukaj, with residence in village Zallq, Municipality of Istog (hereinafter, the Applicant), who is represented by Mr. Xhafer Maloku.

Challenged act

2. The Applicant challenges Notification KMLC no. 45/14 of the State Prosecutor of the Republic of Kosovo (hereinafter, State Prosecutor), dated 2 June 2014, which was served on the Applicant on 11 June 2014, rejecting the Applicant's request addressed to the State Prosecutor to request protection of legality.

Subject matter

3. The Applicant alleges that the abovementioned notification violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 21 [General Principles], Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 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 Constitutional Court, with Decision No. GJR. KI105/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI105/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 4 September 2014 the Court notified the Applicant of the registration of the Referral.
8. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On an unspecified date during 2004, the Applicant brought a civil action with the Municipal Court in Istog, against individuals N. U. and A. U. *"for confirmation of the ownership of a plot of land, registered in cadastral books under no. 523/5, from the Possession List No. 350 of Zallq Cadastral Zone."*
10. On 9 September 2005 the Municipal Court in Istog adopted Judgment C. Nr. 108/04, *"approving the Applicant's civil action and recognized him as a sole owner of the property rights over the above-mentioned plot of land ... obliged*

the respondents N. U. and A. U. to reinstate a metal gate installed by the Applicant, which was previously removed by them... and to pay the expenses of the procedure...

11. Within the time limit provided by the law, the respondents N. U. and A. U. lodged an appeal with the District Court in Peja against the Judgment C. Nr. 108/04, of 9 September 2005.
12. On 13 November 2006 the District Court in Peja adopted Judgment AC. nr. 243/06, approving the respondents' appeal as to the reinstating the metal gate and the expenses of procedure, but rejected their appeal as to the confirmation of the ownership. Thus, returning the case for a retrial by the Municipal Court in Istog.
13. On an unspecified date during 2007 the respondents N. U. and A. U. requested the extraordinary legal remedy of revision with the Supreme Court, against the Judgment AC. nr. 243/06, of 13 November 2006.
14. On 14 April 2009 the Supreme Court adopted Decision 45/2007 approving the revision, and quashed the Judgment C. Nr. 108/04 of Municipality Court in Istog and Judgment AC. nr. 243/06 of District Court in Peja, stating that *"The Supreme Court of Kosovo, for the time being cannot accept such legal stance of lower instance courts, since according to evaluation of this court, judgments of both courts were rendered by constituting substantial violations of contentious procedure provisions, that of first instance court by violations provided by Article 354 para. 2 item 14 of LCP, whereas the judgment of second instance court was rendered by constituting violations as per Article 354 para.1 in conjunction with Article 365 para. 2 of LCP, for which reasons had to be quashed as such."*
15. In its Decision, the Supreme Court returned the case to the Municipal Court in Istog, stating that *"The first instance court in retrial is obligated to avoid the abovementioned flaws, to order the claimant to specify the ground of statement of claim, if by claim is requested the termination of servitude (if there is), annulment of agreement signed on 12.04.1996 (on which are based judgments of lower instance courts) or by claim is requested to be determined the ownership over immovable property, to determine expertise in relation to immovable property background, since from expertise, which is found in case file cannot be determined all elements in relation to these facts."*
16. On 23 May 2011 Municipal Court in Istog adopted Decision C. nr. 119/09, which as requested by the Supreme Court, ordered the Applicant, in compliance with Article 102.1 of the Law on Contentious Procedure, within 3 days to specify the legal basis of the civil action.
17. The Applicant did not answer to this order of the Municipality Court.
18. On 16 April 2014 Basic Court in Peja, as a competent court after the entering into force of the Law on Courts (Law No. 03/L-199), adopted Decision CN. nr. 79/14, which ordered Directorate of Cadastre – Cadastral Office in Istog, in compliance with Decision C. nr. 119/09 of 23 May 2011, to register the plot of

land as it was before the starting of the legal proceedings, since the Court considered that the Applicant withdrew the civil action.

19. On an unspecified date the Applicant submitted a request with the Office of the State Prosecutor, to initiate the request for protection of legality, as an extraordinary legal remedy.
20. On 2 June 2014, the State Prosecutor adopted Notification KMLC no. 45/14, which rejected the Applicant's request, since "*the challenged decision was not rendered, in contested procedure, nor in contentious procedure and neither in executive procedure, and was not decided in relation to the requests of parties, on the ground of statement of claim, but simply we have to do with administrative order, which was issued by an administrative body of the Court, which implies that the challenged decision has not the capacity of final decision a court, as provided by provision of Article 245.1 of LCP, against which can be filed legal remedy, request for protection of legality.*"

Applicant's allegations

21. The Applicant alleges that "*By not giving the right to the injured party Ramiz Ukaj to appeal against Decision Cn. no. 79/14 of 16.04.2014, the President of the Court violated the Article 21, 24, 31, 32, 53 and 54 of the Constitution of the Republic of Kosovo.*"
22. In this respect, the Applicant requests the Constitutional Court to "*... conclude that the Decision of the President of the Basic Court in Peja CN. nr. 79/14, of 16.04.2014, by not given the right, to appeal to Ramiz Ukaj, as a party, whose rights are violated by that decision, has violated his human rights to be equal part to a trial and to have a fair and dignified trial.*"

Assessment of the admissibility of the Referral

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 113 (7), 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."
25. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

(1) The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded".

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

[...], or

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

[...], or

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

26. Notwithstanding the fact that the Applicant submitted the Referral against Notification KMLC no. 45/14 of the State Prosecutor adopted on 2 June 2014, the complaints raised in the referral are directed to the Basic Court Decision CN. nr. 79/14.
27. However, the Court notes that the Applicant did not substantiate any claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the regular courts. The Applicant failed to meet the deadlines provided by the law, for which was duly notified by the competent court (see paragraph 16 of this Resolution).
28. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant have had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
29. The Court notes that the regular courts sufficiently reasoned their decisions and thus the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
30. In sum, the Applicant did not show why and how his rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I; see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
31. Thus, pursuant to Rule 36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (1), c; Rule 36 (2), b) and d) of the Rules of Procedure, on 9 December 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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