



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

Prishtina, 7 November 2014
Ref. no.:RK721/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI107/14

Applicant

Xufe Rracaj

**Notification KMLC Nr. 01/2011 of the State Prosecutor,
dated 13 December 2013**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was filed by Ms. Xufe Rracaj, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Notification of the State Prosecutor KMLC Nr. 01/2011 dated 13 December 2013
3. The Applicant states that the challenged notification was served on her on 23 May 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights, guaranteed by "*Article 6 (...) and Article 5 of Constitution*", as well as "*the right for compensation of salaries from work*".

Legal basis

5. 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

6. On 23 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 7 July 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 1 August 2014, the Court notified the Applicant on the registration of the Referral and sent a copy of the Referral to the Office of the State Prosecutor.
9. On 15 September 2014, the President of the Court replaced Judge Robert Carolan as Presiding Judge of the Review Panel with Judge Snezhana Botusharova.
10. On 23 September 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 30 December 2009, the Municipal Court in Prishtina, in the executive procedure initiated by the Applicant, obliged (E. nr. 322/2003) the OP "Kosovodravo-Commerce" to pay the Applicant a certain amount of Euros.
12. On an unspecified date, the OP "Kosovodravo-Commerce" submitted an appeal against that Decision.

13. On 30 August 2010, the District Court in Prishtina (Decision Ac. Nr 563/2009) approved the debtor's appeal. Thus, the execution of the Decision of the Municipal Court was rejected.
14. The District Court reasoned that the Municipal Court lacked the material jurisdiction to deal with the Applicant's proposal. According to the District Court *"the Special Chamber of the Supreme Court of Kosovo is competent to decide regarding such matters pursuant to Article 29 of UNMIK Regulation... The fact that the respondent enterprise debtor was administered by KTA is also confirmed by letter of KTA number DA-YSC... dated 27 June 2006 addressed to all Courts..."*.
15. On an unspecified date, the Applicant requested to the State Prosecutor protection of legality, alleging that the Decision of the District Court was adopted in contradiction of the provisions of the Law on Contested Procedure and the Law on Executive Procedure, since, according to the Applicant, the Municipal Court in Prishtina had material jurisdiction for the execution in the case at issue.
16. On 18 January 2011, the State Prosecutor (Notification KMLC Nr. 01/2011) tried to inform the Applicant at the postal address St. Rijeka nr. 46/A that *"there is no legal grounds to file the request for protection of legality"*.
17. On 11 December 2013, the Applicant requested information regarding the status of her request for protection of legality, claiming that *"there have been three years that you have not replied to me what has happened with my request"*.
18. On 13 December 2013, the State Prosecutor (Notification KLC Nr. 01/2011) informed the Applicant, at the postal address "Lidhja e Lezhës" nr. 70/3, that *"... it seems that you have not received the notice because your address was incorrect. We are sending you this notice once more to the new address and find attached the notice that was sent before"*.

Applicant's allegations

19. The Applicant claims that *"all legal remedies have been exhausted however it was useless, you can imagine from 2003-2008 was not reviews proposal-request; then Prosecution from 2010- until 2014, i.e. 23 May 2014 was unable to inform the party. We believed that at least the Prosecutor will request protection of legality, which is allowed pursuant to applicable LEP [Law on Executive Procedure]"*.
20. The Applicant therefore requests the Court *"To confirm the violation of the Court and State Prosecutor. To enjoy the right of compensation of salaries (right to work) fundamental right. To complete the payment to me (to order the KPA)"*.

Preliminary assessment of admissibility of the Referral

21. 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.
22. In this respect, the Court refers to Article 48 of the Law which provides:

“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. The Court also refers to Rule 36 (1) c) and (2) d) of the Rules of Procedure, which foresees:

(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: ... d) the Applicant does not sufficiently substantiate his claim.
24. The Court notes that the Applicant, while justifying her Referral, alleges a breach of Articles 5 and 6 of the Constitution. Those Articles have to do with Languages and Symbols of the Republic of Kosovo; and nothing with the facts of the Referral. Thus it is not clear what the allegations of the Applicant are.
25. It appears that the subject matter has to do with a violation of the Applicant's right to fair trial and right to property.
26. The Court considers that the Applicant has not explained and showed how and why her rights, either to a fair trial or to property, were allegedly violated.
27. Moreover, the Court reiterates that it is not to act as a court of fourth instance, when considering the decisions taken by 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*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I. See also Resolution on Inadmissibility in case no 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
28. Accordingly, the Court considers that there is nothing in the Referral which indicates that the case lacked impartiality or that the proceedings were otherwise unfair (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
29. Accordingly, pursuant to Rule 36 (1) c) and Rule 36 (2) d) of the Rules of Procedure, the Court finds that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 1. c) and Rule 36 (2) d) of the Rules of the Procedure, in its session held on 23 September 2014, 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. Dr. Enver Hasani