



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

Prishtina, 24 March 2017  
Ref. no. RK 1050/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI110/16**

Applicant

**Nebojša Đokić**

**Constitutional review of Decision Rev. no. 155/2016 of the Supreme  
Court of the Republic of Kosovo, of 14 June 2016**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
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 Nebojša Đokić from the village Koretishte, Municipality of Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision Rev. no. 155/2016 of the Supreme Court of the Republic of Kosovo of 14 June 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] 32 [Right to Legal Remedies] and 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the European Convention on Human Rights (hereinafter: ECHR).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121, on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 31 August 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 September 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 22 September 2016, the Court notified the Applicant about the registration of the Referral and requested to specify the Referral, fill in the referral form and submit the challenged decisions.
8. On 20 October 2016, the Applicant submitted to the Court the challenged decisions and the completed referral form.
9. On 4 November 2016, the Court sent a copy of the Referral to the Supreme Court.
10. On 18 January 2017 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of general facts**

11. On 22 April 2008, the Applicant and the Post and Telecommunications of Kosovo (hereinafter: PTK) concluded an agreement on the payment of the

outstanding debt in installments, regarding the telephone impulses spent by the Applicant in the amount of € 1.134.79.

12. By this agreement, the Applicant was obliged to pay the outstanding debt for the spent telephone impulses towards the PTK in monthly installments in the amount of 67.40€.
13. Following the signing of the contract, the Applicant paid only one installment of the debt, and stopped with further payments according to the agreement.
14. On an unspecified date, the PTK filed the statement of a claim with the Basic Court in Gjilan.
15. On 7 February 2013, the Basic Court in Gjilan (Judgment P. no. 256/2009) approved as grounded the statement of claim of the PTK and obliged the Applicant to pay the debt in the amount of 1.134.79 € within 15 (fifteen) days after the judgment becomes final.
16. The Applicant filed appeal with the Court of Appeal of Kosovo, claiming that the factual situation was erroneously determined, that the agreement was signed for the activation of the telephone number, not for the payment of debt. The Applicant stated further in the appeal that the contract he signed was in the Albanian language, for which reason he did not understand the content of the latter, and for this reason the contract is unlawful.
17. On 16 November 2015, the Court of Appeal (Judgment Gž. no.1935/2013) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Basic Court, with detailed explanation for each and every allegation of the Applicant.
18. On 21 December 2015, the Applicant filed a request for revision with the Supreme Court of Kosovo against the Judgment of the Court of Appeal.
19. On 14 June 2016, the Supreme Court of Kosovo (Decision Rev. no. 155/2016) rejected as inadmissible the Applicant's request for revision, because the subject matter of the dispute in the appealing part of the Judgment does not exceed the amount of 3.000 Euro.

### **Applicant's allegations**

20. The Applicant alleges that: *"...none of previous instances took into account our allegations that the abovementioned debt of 1.134.79 euro does not exist, because neither the invoice, nor the listings for performed services have been submitted, and we consider that the invoice is the single measure for the existence of the debt, which is not in this case. The debt from the period before 1999 which we are charged with was paid with Telekom, therefore, the PTK does not have any connection, nor their statement of claim was grounded."*
21. The Applicant further alleges that the regular courts *"...have not considered any fact pursuant to the Law on Contested Procedure Article 188,1 and 188.2"*

*where allegedly the court is obliged to provide all evidence for rendering the judgment (bills, and other evidence if they exist)."*

22. Based on the foregoing, the Applicant alleges that that the regular courts *"...violated his rights to liberty and objective trial [...], because the procedure of evidence was not conducted, nor the required documents proving the debt was submitted."*

23. The Applicant requests from the Court the following:

*"The constitutional review of the abovementioned judgment, which violated the rights and the freedoms guaranteed by Article 24 (Equality Before the Law), Article 31 (Right to Fair and Impartial Trial), Article 32 (Right to Legal Remedies) and Article 33 (The Principle of Legality and Proportionality in Criminal Cases) of the Constitution [...] as well as Article 6 and 13 [...] of the ECHR."*

24. Further, the Applicant proposes to the Court:

*"... to annul all the above-mentioned judgments, namely to order the repeated procedure of evidence before the Basic Court in order to submit the documentation proving that the performed action, namely the provision of services by PTK Kosovo and the collection of debt from before 1999, which is unacceptable, and it is not determined that the same debt exists..."*

### **Admissibility of the Referral**

25. The Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*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.*

27. The Court also refers to Article 48 [Accuracy of the Referral] of the Law, which foresees:

*„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. “*

28. In addition, the Court recalls Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which provides:

*(1) The Court may consider a referral if:*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

*(a) the referral is not prima facie justified.*

29. In this case, the Court notes that the Applicant fulfilled the procedural requirements of Article 113.7 of the Constitution. However, in order to examine the admissibility of the Referral, the Court needs further to assess whether the Applicant fulfilled the requirements provided by Article 48 of the Law and the admissibility requirements foreseen in Rule 36 of the Rules of Procedure.
30. The Court notes that the Applicant mainly claims that there were errors in the determination of evidence by the regular courts; that the regular courts did not request the PTK to submit listings and accounts, that in the court proceedings it was established that the PTK provided telephone services; that he did not understand the agreement, because it was in the Albanian language and that the judgments were rendered with a series of violations of the Law on the Contested Procedure and the Law on Obligational Relationships.
31. In fact, the Court notes that the Applicant invokes a large number of provisions of the Constitution and the ECHR. However, he does not explain why he considers that the decision of the regular courts violated all these provisions that guarantee his rights and freedoms.
32. The Court considers that the Applicant tried to build his case on legal grounds, namely on the erroneous interpretation of pertinent laws by the regular courts (namely, Law on Contested Procedure and the Law on Obligational Relationships), as well as erroneous determination of evidence..
33. Further, the Court notes that the Applicant is repeating the same allegations which he had raised in the proceedings before the regular courts, whereby the Court of Appeals (Judgment Gž.no. 1935/2013) gave a detailed response on all these allegations of the Applicant, reasoning among others:

*„:... in the hearing before the first instance court of 7.02.2013, the respondent did not challenge the fact that he reached the agreement on the payment of the debt in installments, [...]. As to the appealing allegations that he did not understand the agreement, because it was in the Albanian language [...] The respondent did not mention this fact before the first instance court, but in his statement he was clear that he understood the agreement and gave the reasons why he did not pay the rest of the debt.“*

34. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of the rights and freedoms guaranteed by the Constitution by the public authority, the Applicant must present a reasoned and a convincing argument.
35. The Court recalls that it is not the role of the Constitutional Court to determine whether certain types of evidence are allowed, what evidence should be taken, nor to specify what evidence is acceptable and what is not. That is the role of the regular courts. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see Case of *Khan v. the United Kingdom*, Application no. 35394/97, paragraphs 34-35, ECtHR Judgment of 12 May 2000).
36. In addition, the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, and, cannot, therefore, act as a "fourth instance court" (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, 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).
37. The Court considers that the Applicant had the opportunity to present before the regular courts the factual and legal reasons for the resolution of his case; that his arguments were duly heard and examined by the regular courts; the proceedings taken as a whole were fair and the rendered decisions were reasoned in detail.
38. The Court further considers that the Applicant does not agree with the outcome of proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21 ECHR, Judgment of 26 July 2005).
39. The Court notes that the Applicant has not presented precise and specific allegation of violation of his rights and has not explained how and why the decision of the Supreme Court, could violate his constitutional rights; he only mentioned that there has been a violation of his constitutional rights. He did not present any *prima facie* evidence indicating a violation of his constitutional rights (See: *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005)
40. The Court considers that the Applicant has not substantiated his allegations that the relevant proceedings in any way were unfair or arbitrary, and that the challenged decision has violated the constitutional rights and freedoms guaranteed by the Constitution and the ECHR (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).

41. Therefore, the Court considers that the admissibility requirements, established by the Constitution, and as further specified in the Law and the Rules of Procedure have not been met.
42. Therefore, the Court concludes that his Referral is inadmissible, as manifestly ill-founded on constitutional basis.

### **FOR THESE REASONS**

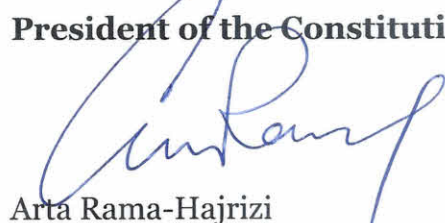
The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (2) (a) and 56 of the Rules of Procedure, on its session held on 18 January 2017, unanimously

### **DECIDES**

- I. TO DECLARE the Referral 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. This Decision is effective immediately;

  
**Judge Rapporteur**  
Bekim Sejdiu



  
**President of the Constitutional Court**  
Arta Rama-Hajrizi