



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

Prishtina, on 22 May 2017
Ref. No.:RK1068/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI111/16

Applicant

Asllan Zenuni

**Constitutional review of the Notification of the State Prosecutor
KMLC.no. 5/16, of 2 February 2016 and the Decision AC. No. 4370/15 of
the Court of Appeal of the Republic of Kosovo, of 18 December 2015**

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 Asllan Zenuni (hereinafter: the Applicant), residing in Ferizaj.

Challenged decision

2. The Applicant challenges the Notification KMLC.No.5/16 of the State Prosecutor, of 2 February 2016 and Decision AC.No.4370/15, of the Court of Appeal of the Republic of Kosovo, of 18 December 2015 (hereinafter: the challenged decisions).
3. The decision of the Court of Appeals was served on the Applicant on 29 December 2015. Whereas the Notification of the State Prosecutor on rejection of the request for protection of legality was served on 2 February 2016.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decisions, which according to the Applicant's allegations violated his rights protected by the Constitution. He did not specify any concrete provision of the Constitution regarding the violation of his rights.

Legal basis

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

6. On 5 September 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 18 October 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Artë Rama-Hajrizi and Gresa Caka-Nimani.
8. On 13 February 2017, the Court notified the Applicant about the registration of the Referral and requested him to supplement the Referral, with relevant documents.
9. On 23 February 2017, the Applicant submitted to the Court a completed Referral with the relevant documentation.
10. On 3 May 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral as out of time.

Summary of facts

11. The Applicant filed a statement of claim with the Basic Court in Ferizaj, due to obstruction of possession and use of property by his neighbors.

12. On 5 October 2015, the Basic Court in Ferizaj (C.No.318/2011), rejected as ungrounded the statement of claim of the Applicant.
13. The Applicant filed appeal against the Decision of 5 October of the first instance court with the Court of Appeal, due to incomplete determination of facts and essential violations of the provisions of the substantive law.
14. On 18 December 2015, the Court of Appeal (Decision AC. No. 4370/15), rejected as ungrounded the appeal of the Applicant, upholding the Decision of 5 October of the first instance court.
15. On 14 January 2016, the Applicant addressed the State Prosecution with a proposal to initiate the request for protection of legality.
16. On 2 February 2016, the State Prosecutor (Notification KMLC.No.5/16) rejected the Applicant's request for protection of legality as ungrounded, because the legal requirements for its initiation with the Supreme Court of the Republic of Kosovo have not been met.
17. On 16 February 2016, the Applicant, filed directly with the Supreme Court of the Republic of Kosovo a request for protection of legality.
18. On 18 March 2016, the administration of the Supreme Court notified the Applicant that his case was not at the Supreme Court, and that to initiate the request for protection of legality, the Applicant may address the State Prosecutor's Office, under Article 245 of the Law on Contested Procedure.

Applicant's allegations

19. The Applicant argues and alleges as it follows:
 - a. *"The Judgment of the first instance was issued by ignoring the proposal of the claimant for imposing the interim measure, disregard of the expertise of 7 September 2015, the allowed time and space for the respondent to act freely in the public property and to usurp and to fence (the wall and the fence) the public property..."*
 - b. *The second instance court violated the provisions of Article 204 of LCP, quote: "the second instance court should examine allegations in the claimants claim that have been crucial for issuing its decision", and also in assessing the evidence, the first instance court violated provisions of Article 8 of LCP, because it has not assessed correctly the claim of the claimant during the court hearings nor evidence he provided, or has not carefully and conscientiously assessed them, and this means that both courts have brought a decision contrary to the evidence, because by my own conviction, this happened due to partiality or any other degrading factor, (...)"*
 - c. *The State Prosecution, under my conviction, has not treated my proposal for submission of the request for protection of legality and responded with a simple notice that there are no violations, and didn't*

advise me of any legal right where to address with a request /appeal to realize my right."

Assessment of the admissibility of Referral

20. The Court shall examine whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

21. With regard to this referral, the Court refers to Article 49 of the Law which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced (...)"

22. The Court also takes into account Rule 36 [Admissibility criteria], paragraph (1) c), of the Rules which provides:

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

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant;"

[...]

23. The Court notes that the abovementioned provisions require that the Referral be filed to the Court within four months from the date on which the final decision was served (the last effective legal remedy).

24. In this respect, the Court notes that the Applicant has received the decision of the Court of Appeals on 29 December 2015, and the Notification of the State Prosecutor (KMLC.no.5/16), on 2 February 2016, whereas he submitted the Referral to the Court on 5 September 2016, which means that the Referral is out of time.

25. Regarding the letter of the Supreme Court of 18 March 2016, the Court considers that this letter cannot be taken into account for the purposes of calculating the four month deadline because it does not meet the criteria to be considered a final decision (the last effective legal remedy).

26. Moreover, the Court recalls that the legal deadline provided in Article 49 of the Law is of preclusive nature and aims to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt with within a reasonable time (see, mutatis mutandis case *O'Loughlin and Others v United Kingdom*, no. 23274/04, ECHR, Decision of 25 August 2005).

27. From the foregoing, the Court concludes that the Applicant's Referral does not meet the admissibility procedural requirements as required by Article 49 of the Law and Rule 36 (1) (c) of the Rules and as such is to be declared as out of time and consequently inadmissible.

FOR THESE REASONS

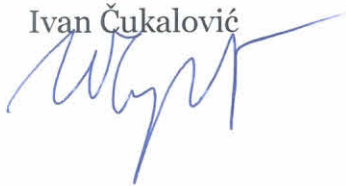
The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 49 of the Law and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, on 3 May 2017, unanimously

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; and
- IV. This Decision is effective immediately;

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

