



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 3 November 2014
Ref. No.:RK718/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI124/14

Applicant

Zineta Nikočević

**Request for acceleration of the proceedings before the Basic Court,
due to passivity**

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 Ms. Zineta Nikočević (hereinafter: the Applicant), residing in Prishtina.

Challenged decision

2. The Applicant does not challenge the decisions of public authorities, but rather requests acceleration of the proceedings before the Basic Court in Prishtina due to passivity and inaction by the Court regarding civil lawsuit (no. C. 2904/12), dated 9 November 2012, wherein the Applicant is presented in capacity of a private claimant.

Subject matter

3. The subject matter is the speeding up of the proceedings before the Basic Court pursuant to the civil lawsuit, filed by the Applicant, on release and restitution into possession of the immovable property.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 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 25 July 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 August 2014, the President of the Court, by Decision No. GJR. KI124/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI78/14, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding Judge), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 13 August 2014, the Court notified the Applicant and the Basic Court on registration of the Referral.
8. On 18 September 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 9 November 2012, the Applicant submitted a civil lawsuit (no. C. 2904/12) with the Basic Court in Prishtina concerning the release and restitution into possession of the immovable property, which is registered in the cadastral registry under the number P-71914059-07596-2, with a surface area of 72.76 are.
10. On 7 February 2014, 2 June 2014, 27 June 2014 and 25 July 2014, the Applicant had submitted submissions to the Basic Court, whereby she had requested to speed up the proceedings concerning the civil lawsuit of 9 November 2012.

Applicant's allegations

11. The Applicant has not specified which of her rights and freedoms have been violated, however she alleges that despite submitting several submissions to the Basic Court, the latter has not scheduled the proceeding, and that such a passive approach and inaction thereof, causes damage to the claimant and her property.
12. The Applicant addressed the Court with the following request:

“that the Court takes all necessary measures and conclude the lawsuit”.

Admissibility of the Referral

13. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedures.
14. In this respect, the Court refers to Article 113.7 of the Constitution, providing that:

“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.”
15. On the other hand, Article 47 (2) of the Law provides that:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”
16. Furthermore, Rule 36 (1) a) provides that:

“The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted”.
17. The Court notes that the Referral of the Applicant shall be reviewed in terms of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, however, the Court observes that the Applicant in her Referral has not specified which of her rights and freedoms, guaranteed by the Constitution, have been violated through the passivity of the Basic Court, referred to, even though the Article 48 of the Law sets forth 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.”*
18. Therefore, the Court considers that, in the present case, the facts upon which the Applicant has based her constitutional complaint do not present violation of the rights and freedoms guaranteed by the Constitution of Kosovo and the

ECHR, and consequently, the position of the Court is that the Referral of the Applicant is premature, as the Applicant's proceeding initiated before the Basic Court is under proceeding, namely there are no decisions of competent authorities which the Court would have reviewed as a basis of violation.

19. The Court reiterates that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of the fundamental human rights.
20. The rationale for the exhaustion rule is to afford competent authorities, including courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order provides an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo* KI41/09, of 27 January 2010 and, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, Decision of 28 July 1999).
21. In the present case, the Court finds that the Applicant has not exhausted all effective remedies under Kosovo law.
22. It results that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

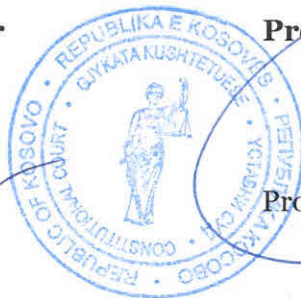
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law, and Rule 36 (1) a) of the Rules of Procedure, in the session held on 18 September 2014, unanimously:

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

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani