



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

Prishtina, 26 January 2015
Ref. No.:RK759/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI140/14

Applicant

Abdurrahman Nazifi

**Constitutional review of Decision KP. no. 416/2014 of the Basic Court in
Prishtina, of 10 June 2014**

THE 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. The Referral was submitted by Mr. Abdurrahman Nazifi from village Sallabajë, Municipality of Podujeva (hereinafter: the Applicant), represented by Mr. Safet Krasniqi, lawyer from Prizren.

Challenged decision

2. The Applicant challenges Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014, by which his request for reopening the criminal proceedings was rejected.

Subject matter

3. The subject matter is the constitutional review of Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014, which allegedly violated Applicant's rights guaranteed by Article 30 paragraph 5 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 22 and 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 16 September 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 September 2014 the Applicant submitted additional (supplemental) documents to the Court.
7. On 7 October 2014 the President of the Court, by Decision no. GJR. KI140/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI140/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 20 October 2014 the Court notified the Applicant of the registration of Referral.
9. On 20 October 2014 the Court sent a copy of the Referral to the Basic Court in Prishtina and the Supreme Court of Kosovo.
10. On 5 November 2014 the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. On 18 April 2011 the Municipal Court in Prishtina by Judgment P. no. 279/2006 found the Applicant guilty of the criminal offence of Legalisation of False Content and of the criminal offence of Fraud, by imposing on him a punishment of imprisonment of 3 years.

12. The Applicant filed an appeal within the legal time limit with the Court of Appeals of Kosovo against the Judgment (P. no. 279/2006) of the Municipal Court in Prishtina.
13. On 16 May 2013 the Court of Appeals, by Judgment PA1. No. 766/12 partly approved the Applicant's appeal and modified the Judgment (P. no. 279/2006), of the Municipal Court in Prishtina, by imposing a punishment of imprisonment of 2 years.
14. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against the Judgment (P. no. 279/2006 of 18 April 2011) of the Municipal Court in Prishtina and the Judgment (PA1. No. 766/12 of 16 May 2013) of the Court of Appeals of Kosovo.
15. On 3 April 2014 the Supreme Court of Kosovo, by Judgment PML. no. 58/2014 rejected the Applicant's request for protection of legality as unfounded, reasoning that his allegations were untenable, because *"[...] the challenged judgments do not contain substantial violations of the criminal procedure provisions, since the challenged judgments are understandable, there are no contradictions with themselves and neither with reasons given in them. The challenged judgments contain the necessary factual and legal reasons on all relevant facts of this criminal matter, including the intent of the convict to commit criminal offence [...]"*.
16. On 16 May 2014 the Applicant filed a request for reopening the criminal proceedings with the Basic Court in Prishtina against the Judgment (P. no. 279/2006) of the Municipal Court in Prishtina, modified by the Court of Appeals of Kosovo, by Judgment (PA1. no. 766/12).
17. On 10 June 2014 the Basic Court in Prishtina, by Decision Kp. no. 416/2014 rejected as unfounded the Applicant's request for reopening the criminal proceedings, thereby providing legal advice that against the Decision (Kp. no. 416/2014) an appeal is allowed with the Court of Appeals in Prishtina, within the time limit of 3 days from the day the decision was served.

Applicant's allegations

18. The Applicant alleges: *"that the courts have not correctly applied the provisions of CC and CPC"*.
19. The Applicant further alleges that the following articles have been violated:

"Article 30, Rights of the Accused, para 5 related to the right to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel."

Article 31 [Right to Fair and Impartial Trial] para 1 by which, everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers".

Article 32 Right to Legal Remedies] [...].”

20. The Applicant also alleges that: *“The three judgments have not taken into consideration the fact that the sale-purchase contract and supporting documentation has been certified and legalized by the competent and responsible person. At the same time the convict has been damaged due to the fact that he paid the amount of money according to sale-purchase contract of immovable property”.*

Admissibility of the Referral

21. The Court first examines whether the Applicant has fulfilled the procedural criteria of admissibility laid down in the Constitution, the Law and the Rules of Procedure.
22. In the present case, the Applicant is a natural person who is basing his Referral on Article 113.7 (Individual referrals) of the Constitution.
23. In this respect, the Court refers to Article 113.7 of the Constitution, 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”.

24. In addition, Article 47.2 of the Law provides:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

25. The Court also refers to Rule 36 (1) a) of the Rules of Procedure, which provides:

(1) The Court may consider a referral if:

(Amended 28 October 2014)

[...]

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or

(Amended 28 October 2014)

26. In the present case, the Court finds that the Applicant has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution, since the challenged decision (Kp. no. 416/2014) allowed him to file an appeal with the Court of Appeals.
27. Therefore, in this regard, the Court considers that the Applicant's Referral does not meet the procedural criteria of admissibility, as required by Article 113.7 of the Constitution.
28. 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 or, if any, to remedy such violation of the fundamental rights. Otherwise, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. (See Resolution on Inadmissibility, KI41/09, of 21 January 2010, *AAB-RIINVEST L.L.C. Prishtina v. Government of the Republic of Kosovo*, and *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, Decision of 28 July 1999).

29. Consequently, the Referral is inadmissible due to non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 25 November 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Arta Rama-Hajrizi

President of the Constitutional Court

Prof. Dr. Enver Hasani

