



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 30 June 2016
Ref. no.: RK957/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI51/16

Applicant

Xhemil Vraniqi

**Constitutional review of
Judgment Rev. no. 294/2015 of the Supreme Court of Kosovo,
of 10 November 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Xhemil (also referred as Gjemil) Vraniqi from Prishtina (hereinafter, the Applicant), who is represented by his daughter Saranda Vraniqi.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 294-/2015 of the Supreme Court of Kosovo, of 10 November 2015, which was served on the Applicant on 14 December 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which the Applicant alleges is unfair. However, the Applicant does not mention what constitutional rights were violated.

Legal basis

4. The Referral is based on Article 113.7 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 Procedures).

Proceedings before the Constitutional Court

5. On 11 March 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 13 April 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 22. April 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 18 May 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 5 February 1980, the Applicant by Decision (No. 02-247/1) of the Radio Television of Prishtina (hereinafter, RTP) acquired the right to use the one room apartment with surface area of 32 m2 located at Mother Teresa Street, entrance 32 – A, where he lived in the period from 1980 to 1986.
10. On 7 February 1985, the Self-governing Community of Interest (hereinafter, SIZ) concluded with the Applicant a contract (No. 1193/11983) on use of the apartment.
11. On 30 September 1985, the Municipal Assembly of Prishtina (Decision no. 360-626) allocated to the Applicant's spouse the one-room apartment in Block I, building no. 3 apartment no. 5.

12. On 8 January 1986, an agreement (No. 01-58/1) was signed between four parties: Director of RTP; the Municipal Assembly of Prishtina; SIZ and Socially Owned Enterprise „Gërmia Commerce“ from Prishtina (hereinafter, SOE Gërmia Commerce)
13. By this agreement, RTP, SIZ and the Municipal Assembly of Prishtina were obliged to give to SOE- Gërmia Commerce the apartment located in Mother Teresa Street and the apartment allocated to the Applicant's spouse (both one-room); SOE Gërmia Commerce was obliged to give to RTP for use of the Applicant the apartment located in the neighborhood “Sunny Hill” at Street no. 3, entr. 22/3 with surface area of 90.93 m2.
14. The Applicant states that immediately after the agreement has been signed, he moved with his family into the “Sunny Hill” apartment; although he has never received a decision on the use of that apartment.
15. On 13 May 1988, the District Commercial Court in Prishtina (Judgment E. no. 1038/87) annulled the four parties’ agreement (No. 01-58/1). However, the Applicant continued to live in the “Sunny Hill” apartment.
16. On 24 September 1992, the SOE Gërmia Commerce (Decision No. 506) allocated the Mother Teresa Street apartment to the worker H.Z..
17. On 11 March 1993, the Municipal Assembly of Prishtina (Decision No. 360-359) ordered the Applicant to vacate the “Sunny Hill” apartment on the grounds that he moved in *“in an unlawful manner”*.
18. On 29 October 1993, based on that order, the Applicant was expelled from the “Sunny Hill” apartment and the same apartment was allocated to another worker of RTP.
19. In 2008, the Applicant initiated a dispute before the Housing and Property Directorate (HPD) regarding the “Sunny Hill” apartment. He lost this dispute, because the right for use was recognized to another RTP employee.
20. Then, the Applicant filed a claim with the Municipal Court in Prishtina, requesting to be returned *“the apartment which is located in Prishtina, “Nena Tereze” Street, (...), and to hand it over into possession and in use to the claimant within a deadline of 15 days”*.
21. On 15 January 2013, the Municipal Court in Prishtina (Judgment C. no 1981/08.) rejected as ungrounded the Applicant’s statement of claim.
22. The Municipal Court established that the Applicant *“did not use the contested apartment for a period of more than 20 years, therefore the contract upon the use of the apartment has been terminated according to the law”*.
23. The Municipal Court determined the termination of the contract *“because according to the provision of Article 29, item 5 of the Law on Housing Relations, which foresees that: “If the holder of the apartment right and members of his family do not use the apartment for more than 5 years*

uninterruptedly, and during that time they have lived somewhere else in the country or abroad, the contract upon the use of the apartment is terminated and the holder of the apartment right is obligated to handover the empty apartment to the giver of the apartment for use”.

24. The Applicant filed an appeal with the Court of Appeal due to “*substantial violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law*”.
25. On 9 March 2015, the Court of Appeal (Judgment AC. no. 2150/13) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court.
26. The Applicant filed a request for revision to the Supreme Court of Kosovo due to “*substantial violation of the contested procedure provisions and erroneous application of the substantive law*”.
27. On 10 November 2015, the Supreme Court (Judgment Rev. no. 294/2015) rejected as ungrounded the request for revision and approved the legal stance of the lower instance courts as correct and lawful.
28. In fact, the Supreme Court approved the Judgments of the lower instance courts “*because their judgments do not contain substantial violations of contested procedure provisions or erroneous application of the substantive law*”.

Applicant's allegations

29. The Applicant does not mention what constitutional rights or provisions of the Constitution have been violated.
30. The Applicant states that “*a big injustice has been done, by denying the fundamental human right, the right to housing*”; he also hopes that “*in the end the justice will be decided fairly and impartially based on arguments and facts*”.

Admissibility of the Referral

31. The Court examines whether the Applicant has met the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
32. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

*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.

33. The Court also refers to Article 48 [Accuracy of the Referral] 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 a public authority is subject to challenge.

34. In addition, the Court also recalls Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, which foresees:

“(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:

[...]

(d) the Applicant does not sufficiently substantiate his claim.”

35. In this regard, the Court firstly emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far they may have infringed the Applicant's rights and freedoms protected by the Constitution (constitutionality).
36. The Court notes that the Applicant repeats before the Court the same allegations on legality grounds presented before the Court of Appeal and the Supreme Court; he has not substantiate an allegation on his rights and freedoms protected by the Constitution having been violated by the regular courts.
37. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, 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).
38. The Court considers that the Applicant had the opportunity to present before the regular courts the material and legal reasons relevant to the resolution of the dispute; his arguments were duly heard and examined by the regular courts; the proceedings viewed in their entirety were fair and the delivered decisions were thoroughly justified.
39. The Court notes that the Applicant does not bring before it a precise and concrete allegation on a violation of his rights and does not explain how and why the Judgment of the Supreme Court could have infringed his

constitutional rights; he only mentions that there has been a violation of constitutional rights, because the "*Judgment of the Supreme Court is not fair*". He has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights. (See *Vanek vs. Slovak Republic*, ECtHR Decision, no. 53363/99 of 31 May 2005, and *Shub v. Lithuania*, No. 17064/06, ECHR, decision of 30 June 2009).

40. The Court notes that the Applicant disagrees with the conclusion of the regular courts on termination of his alleged right to use an apartment. The termination of his alleged right was discussed and decided by the Municipal Court.
41. In fact, the Court recalls that the Municipal Court (Judgment C. no. 1981/08.) determined the termination of the contract, because the Applicant did not use the contested apartment for a period of more than 20 years and, according to Article 29, item 5 of the Law on Housing Relations, the Applicant was obligated to handover the empty apartment.
42. The Court considers that the Judgment of the Municipal Court in Prishtina is fair and reasoned. In fact, it explains in detail why the contract on the use of the apartment was terminated. The discussion and decision of the Municipal Court was upheld by the Supreme Court and the Court of Appeal.
43. The Court notes that the establishment of the facts and the application of law as done by the Municipal Court and its reasoning and decision were accepted as correct by the Court of Appeal and the Supreme Court.
44. The Court considers that the admissibility requirements as established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure have not been met.
45. For the reasons above, the Court concludes that the Referral is manifestly ill founded on a constitutional basis and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 18 May 2016, 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi