



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

Prishtina, on 14 March 2016
Ref. No.:RK905/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI54/15

Applicant

Melihate Nura

Constitutional review of Judgment ARJ. no. 31/2014, of the Supreme Court, of 14 January 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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mrs. Melihate Nura from Prishtina, who before the Constitutional Court is represented by her daughter Mrs. Afërdita Nura-Lama (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court [ARJ. no. 31/2014] of 14 January 2015. This Judgment was served on the Applicant on 13 February 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 102.3 [General Principles of the Judicial System].

Legal Basis

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

Proceedings before the Constitutional Court

5. On 29 April 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 June 2015, the President of the Court by Decision GJR. KI54/15 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI54/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Bekim Sejdiu.
7. On 1 July 2015, by Decision GJR. KI54/15, the President of the Court appointed Judge Arta Rama-Hajrizi as member of the Review Panel replacing Judge Kadri Kryeziu, whose mandate with the Constitutional Court ended on 26 June 2015.
8. On 20 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 28 January 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

10. On 7 November 2007, the Municipality of Prishtina rendered Decision [05 no. 350-23648] which rejected the Applicant's request for granting the urban-technical agreement for the renovation of the damaged residential building.
11. The Applicant filed an appeal with the second instance authority of the Municipality of Prishtina.
12. On 22 February 2008, the second instance authority of the Municipality of Prishtina rendered decision [01 no. 350-23648] which rejected the appeal of the Applicant as ungrounded.

13. Against the abovementioned decisions of the Municipality of Prishtina, the Applicant filed the appeal with the Administrative Matters Panel of the Supreme Court of Kosovo, as a competent court for the resolution of disputes pursuant to the Law on Courts applicable at that time.
14. On 31 October 2012, the Panel for Administrative Matters of the Supreme Court of Kosovo [Judgment A. no. 607/2008] rejected the Applicant's appeal as ungrounded.
15. Against the first instance Judgment [A. no. 607/2008] of the Supreme Court, the Applicant filed appeal with the second instance of the Administrative Matters Panel of the Supreme Court, as a competent court for the resolution of disputes pursuant to the Law on Courts applicable at that time.
16. Bearing in mind the entry into force of the new Law on Courts, the General Matter Department of the Court of Appeal decided on the Applicant's appeal. As regards the jurisdiction of the court in this case, the Court of Appeal found the following:

“The Court of Appeals has jurisdiction in this legal matter based on Article 39 of the Law No.03/L-199, on Courts, whereby it was provided that, “All cases which, on 31 December 2012, are second instance cases of the Supreme Court, District Court or High Court for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Court of Appeals.”
17. On 24 July 2014, the of the General Matter Department of the Court of Appeal rejected [Judgment AA. no. 59/2014] the Applicant's appeal as ungrounded and upheld the Judgment [A. no. 607/2008] of the Supreme Court.
18. On 14 January 2014, the Applicant filed request for reconsideration of extraordinary review of the Judgment of the Court of Appeal and of the Supreme Court.
19. On 14 January 2015, the Supreme Court [Decision ARJ. no. 31/2014] rejected the Applicant's request for reconsideration of extraordinary review of the Judgment of the Court of Appeal [AA. no. 59/2014] and Judgment [A. no. 607/2008] of the Supreme Court as invalid because it was filed out of the time limit provided by the law.

Relevant legal provisions concerning the Law on Courts

LAW ON COURTS NO. 03 L-199

Article 39

Completion of pending cases

1. *All cases which, on 31 December 2012, are second instance cases of the Supreme Court, District Court or High Court for Minor Offences and have*

not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Court of Appeals.

2. All cases which, on 31 December 2012, are first instance cases of the Supreme Court, District Court, District Commercial Court, Municipal Court or the Municipal Courts for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Basic Court which has the appropriate territorial jurisdiction.

This Law shall enter into force on January 1, 2011.

Applicant's allegations

20. The Applicant alleges that:

“the lower instance court, the Court of Appeal in the present case, cannot decide on the complaint filed against Judgment of the Supreme Court, namely the higher instance court”.

21. The Applicant further alleges that:

“in the present case, only the Supreme Court of Kosovo is competent to decide regarding the complaint filed against Judgment A. No. 607/2008, of the Supreme Court of Kosovo, of 31 October 2012.”

22. The Applicant requests the Court :

“In the second instance, the Supreme Court of Kosovo, as the court having jurisdiction on this matter, shall decide on this case, or, in the best case, when both of the abovementioned judgments - the one of the Court of Appeals and the one of the Supreme Court, are annulled, the Court having jurisdiction should render a decision pursuant to the law.”

Admissibility of the Referral

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

24. In this respect, the Court refers to Article 113. 1 and 7 of the Constitution, which provides:

“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.”

25. The Court mentions also Article 48 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.”

26. The Court further takes into account Rule 36 (2) (b) of the Rules of Procedures, which provides:

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

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights”.

27. The Court notes that the Applicant complains on the fact that on the appeal against the Judgment of the Supreme Court decided the Court of Appeal, therefore, based on this, her right guaranteed by Article 102.3 [General Principles of the Judicial System] has been violated.
28. In this regard, the Court notes that the Court of Appeal also explained in detail the question of jurisdiction in this case, by citing the Law on Courts No. 03/L-199, based on which the Court of Appeal had a jurisdiction to decide on the present legal matter, therefore, the Court of Appeal reasoned its decisions and substantiated each allegation of the Applicant regarding the rejection of her appeal.
29. The Court also notes that the Supreme Court rejected the Applicant’s request for extraordinary review of the Judgment as inadmissible, because it was filed as out of the time limit provided by the law.
30. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court. It is the role of regular courts to interpret and apply pertinent rules of procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).
31. In the present case, the Court does not find that the proceedings before the Supreme Court and the Court of Appeal were in any way unfair or arbitrary (see *mutatis mutandis Shub vs. Lithuania*, ECHR, Decision on admissibility of application, no. 17064/06, of 30 June 2009).
32. Therefore, the Court notes that the Applicant did not substantiate her allegation on constitutional grounds and did not provide evidence indicating how and why her rights and freedoms, protected by the Constitution, were violated by the challenged decision.

33. The Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 28 January 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


Robert Carolan



President of the Constitutional Court


Arta Rama-Hajrizi