



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

Prishtina, 31 October 2016
Ref. No.:RK991/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI83/16

Applicant

Iliria and APIKO

**Request for review of “*legality and constitutionality*” of the
Judgment KI132/15 of the
Constitutional Court of the Republic of Kosovo,
of 20 May 2016**

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
Bekim Sejdiu, Judge
Selvete Gërzhaliu, Judge
Gresa Caka-Nimani, Judge.

Applicants

1. The Referral was submitted by Iliria and APIKO, two Socially-Owned Enterprises (hereinafter, the Applicants), which are represented by Mr. Teki Bokshi, a lawyer practicing in Gjakova.

Challenged Decision

2. The Applicants challenge the “*legality and constitutionality*” of the Judgment KI132/15 of the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), of 20 May 2016.

Subject Matter

3. The subject matter of the Referral is the Applicants’ request to the Court to “*revoke*” and “*abrogate*” its Judgment referred to above, which, they allege, is “*unlawful and unconstitutional*.”
4. The Applicants allege that the Constitutional Court has violated their rights guaranteed by Article 1 [Definition of State]; Article 2 [Sovereignty]; Article 3 [Equality Before the Law]; Article 24 [Equality Before the Law]; Article 31 [Right to Fair and Impartial Trial]; Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution); their rights guaranteed by Article 6 [Right to Fair Trial] of the European Convention on Human Rights (hereinafter, ECHR); Article 1 [Protection of Property] of Protocol 1 to the ECHR and Article 2 [Right of Appeal in Criminal Matters] of Protocol 7 to the ECHR; their right guaranteed by Article 10 of the Universal Declaration on Human Rights (hereinafter, UDHR); as well as their right guaranteed by Article 14 of the International Covenant on Civil and Political Rights (hereinafter, ICCPR).

Legal basis

5. The Referral is based on Article 21 (4) and 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rules 29 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 21 May 2016, the Applicants submitted the Referral to the Court through postal services. They stated that they would reserve the right to supplement their Referral within a reasonable time.
7. On 25 May 2016, the Court received the Referral in its offices.
8. On the same day, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
9. On 26 May 2016, the Court informed the representative of the Applicants about the registration of the Referral and requested him to submit a power of attorney for Iliria and APIKO within five (5) days.
10. On 27 May 2016 and 1 June 2016, the Applicants submitted additional documents.

11. On 15 June 2016, the Applicants filed the requested power of attorney as well as supplemented their Referral with additional information.
12. On 11 July 2016, the President of the Court replaced Judge Robert Carolan as member of the Review Panel with Judge Snezhana Botusharova, who assumed the role of Presiding Judge in the Review Panel.
13. On 15 July 2016, 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

14. On 3 November 2015, Visoki Dečani Monastery filed a Referral [KI132/15] with the Court requesting “*constitutional review of two Decisions of 12 June 2015, No. AC-I-13-0008 and No. AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters.*” The Visoki Dečani Monastery also requested the Court to impose an interim measure until decision on the merits of the Referral.
15. On 12 November 2015, the Court (Decision ref. no. VMP865/15) granted the requested interim measure. That Decision was published on 03 December 2015 and effective until 29 February 2016.
16. On 10 February 2016, the Court (Decision ref. no. VMP889/16) extended the interim measure. That Decision was published on 12 February 2016 and effective until 31 May 2016.
17. On 20 May 2016, the Constitutional Court, pursuant to Articles 21.4 and 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (a) of the Rules of Procedure, rendered the Judgment KI132/15 through which decided on the admissibility and merits of the Referral filed by the Visoki Dečani Monastery. The Constitutional Court, in the operative part of that Judgment, decided:

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights;

III. TO HOLD that it is not necessary to examine whether there has been a violation of Articles 24, 32, 46 and 54 of the Constitution, and of Article 13 of the European Convention on Human Rights;

IV. TO HOLD that the two Decisions of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 12 June 2015, Nos. AC-I-13-0008 and AC-I-13-0009 are null and void, and that the two Decisions of the Specialized Panel on Ownership of the Special Chamber of the

Supreme Court on Privatization Agency of Kosovo Related Matters of 27 December 2012, No. SCC-08-0226 and No. SCC-08-0227, are final and binding, and as such are *res judicata*;

V. *TO NOTIFY this Decision to the Parties;*

VI. *TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;*

VII. *This Decision is effective immediately.*

Applicant's allegations

18. The Applicants claim that the Judgment of the Court violated their rights guaranteed by Articles 1, 2, 3, 24, 31 and 46 of the Constitution; Article 6 of the ECHR, Article 1 of Protocol 1 to the ECHR and Article 2 of Protocol 7 to the ECHR; Article 10 of the UDHR; and Article 14 of the ICCPR.
19. In fact, the Applicants allege that, before deciding, "*it was indispensable to hold a public hearing (...) taking into account the complexity of the matter, both factually and legally, the involvement of many subjects, the great interest of the public opinion, the repercussions that were to be created by the decision of the Constitutional Court and the consequences of such decision*". They consider that the "*failure to make it possible to hold a public and transparent hearing for rendering this Judgment [KI 132/15], make the latter [...] incorrect and unfair*".
20. The Applicants claim that "*contrary to the legitimate expectations of the subjects [Iliria and APIKO], the Constitutional Court, through the Judgment challenged by this Referral, has not reviewed the fundamental right to property and has legitimized an unlawful, unconstitutional and ultimately an unethical agreement concluded between UNMIK and Deçani Monastery*".
21. In the end, the Applicants request to the Court what follows.

"The Judgment of the Constitutional Court of the Republic of Kosovo, in Case KI132/15, of 20 May 2016, in the matter initiated by Deçani Monastery, for constitutional review of two Decisions of 12 June 2015, No. AC-I-13-0008 and No. AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters, is revoked, abrogated, as unlawful and unconstitutional,

To reopen the court review, so that the proceedings are repeated,

To schedule a public hearing, where all the parties will be summoned and to make the adjudication transparent, public,

To submit amicus curiae, in order to assist the parties and the Court,

To review the complaints and objections as property owners,

To hold that E.T. made legal violations when he concluded the agreements, settlements or when he represented before the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of

Kosovo related matters, since as the representative before that Chamber may be only a person with a lawyers' license, That the Constitutional Court of the Republic of Kosovo allows the Basic Court in Peja, branch in Deçan, to normally proceed, in order that the court carries out its legal and constitutional function, considering that also the Basic Court in Peja, branch in Deçan is a Court within the system of the Republic of Kosovo."

Admissibility of the Referral

22. The Court first examines whether the Applicants have met the requirements of admissibility as established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
23. The Court initially refers to Article 113 (7) of the Constitution, which establishes:

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. The Court notes that the Applicants have filed their Referral based on the aforementioned Article 113 (7) of the Constitution, in order to contest the "legality and constitutionality" of the challenged Judgment. They allege that the Judgment is "unlawful and unconstitutional" and that, as such, violated their rights and freedoms as referred above. As a result, they request the Court to "revoke" and "abrogate" its Judgment.
25. In this respect, the Court notes that Article 113 (7) is placed under Chapter VIII of the Constitution titled "Constitutional Court". In addition, Article 113 (7) of the Constitution is titled "Jurisdiction and Authorized Parties". The referred placement and titles are important to be aware of the jurisdiction of the Constitutional Court and of the parties who are authorized to refer constitutional matters to the Court.
26. In this direction, the Court observes that the constitutional provision under Article 113 (7) refers to authorized parties that can refer violations allegedly committed by decisions of public authorities, other than those of the Constitutional Court.
27. The Court considers that such conclusion is self-deriving once it is read, and it must be read, in conjunction with paragraphs 1 of Articles 112 [General Principles] and 116 [Legal Effect of Decisions] of the Constitution. Those constitutional provisions establish:

Article 112 (1)

The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

Article 116 (1)

Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

28. The Court also observes that there is no provision under the Constitution that provides individuals or legal persons with a right to contest the “*legality or constitutionality*” of the decisions of the Constitutional Court, may it be Judgments, Decisions or any other Orders. On the contrary, there are provisions, as those under Articles 112 (1) and 116 (1), which prohibit any legal action against the decisions of the Constitutional Court. The rationale behind Articles 112 (1) and 116 (1) of the Constitution is to make it clear that the decisions of the Constitutional Court are final, binding and constitute a *res judicata* matter. As such, they cannot be contested by anybody under any ground.
29. In that respect, the Court emphasizes that its decisions can only be rectified for clerical and calculation errors. Such possibility is foreseen in Rule 61 [Correction of Judgments and Decisions] of the Rules of Procedure. That Rule foresees:

(1) The Court may, ex officio, or upon application of a party made within two weeks of the service of a Judgment or decision, rectify any clerical and calculation errors in the judgment or decision [...].
30. The Court recalls that the Applicants request that the Court “*revokes*” and “*abrogates*” its Judgment (KI132/15, of 20 May 2016). Such legal action is not allowed, permitted or otherwise authorized in any way by any provision of the Constitution, the Law or the Rules of Procedure. The Constitutional Court cannot review, revoke, reconsider or abrogate its Judgment(s), Decision(s) or Order(s). It can merely rectify a clerical error or a calculation error, which is not what the Applicants are requesting through this Referral.
31. The Court also recalls that it dealt with similar Referrals, whereby other Applicant(s) requested a constitutional review of a decision of the Constitutional Court, with which they were discontented. In all such cases, the Court has reasoned that its decisions are final and binding, and as such they are *res judicata*, and thus cannot be subject of any review. (See cases KI228/13, KI04/14, KI11/14, KI13/14: Applicants *Lulzim Ramaj and Shahe Ramaj* in case KI228/13 and *Lulzim Ramaj* in cases KI04/14, KI11/14, KI13/14, the Constitutional Court, Resolution on Inadmissibility of 12 June 2014; KI224/13 - Applicant *Mustafë Osmani*; the Constitutional Court, Resolution on Inadmissibility of 2 June 2014; KI221/13 - Applicant *Shaqir Përvetica*, the Constitutional Court, Resolution on Inadmissibility of 5 May 2014).
32. Moreover, the Court declared those Referrals inadmissible as incompatible *ratione materiae* with the Constitution.
33. As in those previous cases, the Court consistently refers to Rule 36 3 (e) of the Rules of Procedure which provides:

(3) A referral may also be deemed inadmissible in any of the following cases:

(e) the Referral is incompatible *ratione materiae* with the Constitution [...].

34. The Court emphasizes that the compatibility *ratione materiae* of a Referral with the Constitution derives from the Court's substantive jurisdiction. The right(s) relied on by the Applicant(s) must be guaranteed by the Constitution for a constitutional complaint to be compatible *ratione materiae* with the Constitution.
35. As seen above, the Constitution does not provide a right to challenge the "legality or constitutionality" of decisions of the Constitutional Court. Thus the Applicants' Referral, complaints and requests contained therein, is incompatible *ratione materiae* with the Constitution. Therefore, the Court concludes that the requests entailed in the Applicants' Referral fall out of the substantive jurisdiction of the Court i.e. are incompatible *ratione materiae* with the Constitution.
36. Moreover, the Court emphasizes that one of the core principles of the rule of law in a democratic society is the principle of legal certainty. That stands true in particular as regards judicial decisions that have become *res judicata*. No party, be it individual or legal person, is entitled to seek a review, a revocation, a reconsideration or an abrogation of a final and binding decision merely for the purpose of obtaining a rehearing and a fresh determination of the case. (See, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, No. 48553/99, paragraph 72, ECHR 2002-VII; and *Ryabykh v. Russia*, No. 52854/99, paragraph 52, ECHR 2003-IX).
37. In fact, the Court considers that reviewing, revoking, reconsidering or abrogating a final and binding decision would lead to a general legal uncertainty which would be in contradiction with core principles of the rule of law. In other words, the reversal of final decisions would result in a general climate of legal uncertainty which would make completely ineffective the legal order. As a consequence, the public confidence in the judicial system and in the rule of law itself would be significantly reduced.
38. Lastly, the Court notes that all other requests contained in the Applicants' final petition are also to be rejected as ungrounded. In this respect, the Court notes that it is not obliged to answer every request of the Applicants' when it considers a Referral to be inadmissible on procedural grounds, as in the current case. However, the Court will briefly explain in the following five paragraphs why all other requests contained in the Applicants' petition are to be rejected as ungrounded.
39. The Court recalls that the Applicants requested to order "reopening of regular court proceedings" and "allowing the Basic Court in Peja to proceed normally with the proceedings". The Court refers to its extensive reasoning provided in its challenged Judgment. Therefore, the Court considers unnecessary to further repeat or duplicate the conclusions provided therein as it has decided which

decisions were to be declared null and void and which were to be considered as *res judicata*.

40. The Applicants also requested to “*hold a public hearing*” and “*order submissions of amicus curiae*”. The Court recalls that, pursuant to Article 24 of the Law in conjunction with Rule 39 (2) of the Rules of Procedure, it is not obliged to hold a public hearing if it does not deem it necessary to decide upon the merits of a case. The same principle applies for the submissions of amicus curiae, in accordance with Rule 53 of the Rules of Procedure. Both of these possibilities provided by the Law and Rules of Procedure are tools that are designed to make easier the decision-making within the Court. However, it is entirely within the discretion of the Court as to whether it finds it necessary to make use of them or not in a particular case. In fact, the primary working method of the Court is to decide based on the information and documents provided in the case-file.
41. The Applicants further requested to “*take into account the appeals and objections filed by Iliria and APIKO*”. The Court notes that the Applicants were provided with the opportunity to comment on Referral KI132/15, in which the challenged Judgment was delivered. However, they submitted their comments three months after the deadline assigned by the Court. On the other hand, the Applicants never requested a possible extension of the deadline. Therefore, the Court did not take them into consideration.
42. Lastly, the Applicants requested the Court “*to hold that E.T. made legal violations*”. The Court emphasizes that it is not within its jurisdiction to conclude that a certain person has or has not made any legal violations. Therefore, such request is out of the matters that may be referred to the Court in the view of its competences established by the Constitution.
43. Finally, the Court emphasizes that all of the aforementioned requests of the Applicants’ fall outside of the scope of Referrals that may be submitted under Article 113 (7) of the Constitution. According to that Article, individuals are authorized “*to refer violations by public authorities of their individuals rights and freedoms guaranteed by the Constitution*”, which is not what the Applicants’ did with their additional requests entailed in their final petition. Consequently, as it was explained above, the Court has no jurisdiction to review a case beyond the limits established by the Constitution itself.
44. In sum, the Court concludes that, pursuant to Articles 113 (7) and 116 (1) of the Constitution and Rule 36 (3) (e) of the Rules of Procedure, the Referral is incompatible *ratione materia* with the Constitution and thus is inadmissible.
45. Therefore, Court finds that the Applicants’ Referral has not met the requirements of admissibility as established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) and 116 (1) of the Constitution, and Rule 36 (3) (e) of the Rules of Procedure, on 15 July 2016, unanimously:

DECIDES

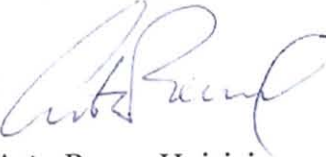
- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Almiro Rodrigues



President of the Constitutional Court


Arta Rama-Hajrizi