



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 7 March 2016

Ref. no.:RK901/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI92/15**

Applicant

**Naim Sejdiaj**

**Request for constitutional review of Decision AC. no. 4891/2014, of the  
Court of Appeal of Kosovo, of 27 February 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  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu, Judge  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Applicant is Mr. Naim Sejdiaj from Podujeva, who is represented by Mr. Gani Asllani, lawyer from Prishtina.

## **Challenged Decision**

2. The Applicant challenges Decision Ac. no. 4891/2014, of the Court of Appeal of Kosovo, of 27 February 2015 which was served on the applicant on 13 march 2015.

## **Subject Matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights].

## **Legal Basis**

4. Article 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 Rule 29 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 6 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 August 2015, the President of the Court by Decision appointed Judge Robert Carolan as Judge Rapporteur, and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Artta Rama-Hajrizi and Bekim Sejdiu.
7. On 7 October 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal. On the same date, the Court sent a copy of the Referral to the National Trade Bank (BKT) as a third and interested party, requesting to send the eventual comments to the Court within the time limit provided by the Court.
8. On 20 October 2015, the Court received the BKT comments regarding the Referral.
9. On 9 February 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**

10. In 29 June 2012, the Applicant concluded a contract with BKT for receiving a loan on behalf of a private company, with him as a sole owner, in the amount and term loan repayment as stipulated in the contract. The contract and its annexes have specified the requirements including the consequences in case of failure to repay the loan.

11. On 6 November 2013, BKT submitted to the Basic Court in Prishtina a proposal for enforcement on real estate – mortgage, against the property of the Applicant, presented as a mortgage guarantees when receiving a loan, due to non- payment of the loan installments on regular basis.
12. On 8 November 2013, the Basic Court in Prishtina, by Decision E. no. 1578/2013, allowed the proposed enforcement.
13. Against this decision, the Applicant filed the objection with the Basic Court in Prishtina. The Applicant stated that the delays in the payment of the loan, were a consequence of serious injuries of the Applicant in a traffic accident, and he challenged the manner of calculation of the interest on the principal debt.
14. On 19 November 2014, the Basic Court in Prishtina rendered Decision E. no. 1578/2013, which rejected as ungrounded the objection filed by the Applicant *"because he did not provide the evidence to support their allegations and any of the conditions stipulated by the law for annulment of the decision or its suspension have not been met"*.
15. Against this Decision the Applicant submitted appeal to the Court of Appeal of Kosovo.
16. On 27 February 2015, the Court of Appeal of Kosovo rendered Decision Ac. no. 4891/2014, which rejected the Applicant's appeal as ungrounded, and upheld the Decision of the Basic Court.
17. The Court of Appeal in its decision stated that: *"This court assessing the conclusion of the first instance court, namely the challenged decision which rejected the objection of the debtor, finds that such a conclusion of the court is based and is supported by the case file and legal provisions, and therefore, the challenged decision contains complete and compelling reasons"*.
18. On 30 March 2015, the Basic Court by Decision E. no. 1578/13, allowed the transfer of the enforcement procedure to a private enforcement agent.
19. On 8 April 2015, the private enforcement agent D.B. rendered the conclusion on the continuation of enforcement procedure in Case E. no. 1578/13.

### **Applicant's allegations**

20. The Applicant alleged that BKT has unlawfully calculated interest on the principal debt, and the regular courts by allowing the execution procedure on his immovable property, also violated the law because they failed to find the BKT error.
21. The Applicant further alleged that by the transfer of the case to a private enforcement agent, the court violated Article 67 of the Law on Contested Procedure, because the private enforcement agent who will continue the execution procedure, was a senior BKT officer.

22. The Applicant requested the Court to appoint an expert to determine the exact amount of debt that the Applicant has to return to the BKT.

### **BKT response regarding the Applicant's Referral**

23. BKT in its reply submitted to the Court, stated: *"Therefore, as described above, it is clearly seen that the debtor filed the ordinary legal remedies as legal instruments for the protection of his rights and in this way was ensured the right to fair and impartial trial, because the decision in the first instance and the decision in the second instance court were rendered by the competent authorities for implementation of law by rendering decisions based on applicable law, therefore, BKT considers that in the present case the allegations of the debtor, that his right to fair and impartial trial was violated and denied by the justice authorities of the Republic of Kosovo, do not stand!"*.

### **Assessment of the Admissibility of the Referral**

24. In order to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

25. In this respect, the Court 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."*

26. The Court also takes into account Rule 36 of the Rules of Procedure, 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. In assessing the allegations filed by the Applicant, the Court notes that he challenges Decision Ac. no. 4891/14, of the Court of Appeal, by which the court decided on his appeal against the Decision of the Basic Court in Prishtina on allowing the enforcement on his immovable property.

### **Relevant constitutional provisions regarding the case**

#### **Article 31 [Right to Fair and Impartial Trial]**

*"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers."*

2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law*".

[...]

#### **Article 54 [Judicial Protection of Rights]**

*"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated"*.

28. Assessing the constitutionality of the challenged Decision in the light of the allegations of constitutional violations and facts presented by the Applicant, comparing these facts with the content of the provisions above, the Court finds no arguments of violations of the constitutional provisions. The allegations by the Applicant are based solely on *".....erroneous and incomplete determination of the factual situation, namely the incorrect calculation of legal interest....."* are allegations of a legal violation, not a constitutional violation
29. The Court further finds that the Applicant's allegations were adequately treated by the regular courts for the issues raised, in particular the Court of Appeal, which reasoned its decision by not finding any violation in relation to the Applicant's allegations, and elaborated extensively the contractual obligations of Applicant in relation to BKT.
30. As regards the other Applicant's claim for violation of Article 31 of the Constitution, i.e., the alleged bias in the trial, because according to the Applicant's claim, the private enforcement agent, to whom the execution procedure had been transferred, was a senior BKT officer, the Applicant, at the time the contest was conducted, presented no evidence to support that claim. Furthermore, the Applicant stated that this action is contrary to Article 67 of the LCP, but did not explain how Article 31 of the Constitution was allegedly violated.
31. The Court recalls that one of the foundation principles of the constitutional review is the principle of subsidiarity. In the special context of the Constitutional Court, this implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the regular courts, and not directly or immediately to the Constitutional Court (see *Scordino vs. Italy*, no. 1, [GC], § 140).
32. In this regard, the Court notes that the Applicant had ample opportunities to present his allegations and to challenge the claims of the BKT as a responding party, therefore, the allegation that the Applicant may have been treated in a detrimental way during the court proceedings, cannot be substantiated. (See among others, Case KI71/15, Applicant *Miftar Bajrami* the Constitutional Court of Republic of Kosovo-Constitutional Review of Decision CML. no. 5/2014, of the Supreme Court of Kosovo of 23 December 2014.)



33. In these circumstances, the Court finds that the facts submitted by the Applicant do not in any way justify the allegation for violation of a constitutional right or of a right guaranteed by the ECHR; therefore, it cannot be concluded that there is a violation of human rights by the challenged decision and in accordance with Rule 36 paragraph (2) item (b) and (d), the Court finds that the Referral must be declared inadmissible on a constitutional basis as manifestly ill-founded.

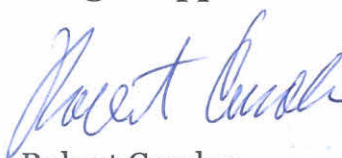
### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law, Rule 36 (2) (b)(d) of the Rules of Procedure, on 9 February 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**



Robert Carolan



**President of the Constitutional Court**



Arta Rama-Hajrizi