



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

Prishtina, 5 December 2014
Ref. No.: RK736/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI94/14

Applicant

Sadat Ademi

**Non-execution of Judgment PA1 no.966/2013 of the
Court of Appeals in Kosovo,
dated 27 November 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Sadat Ademi, residing in Pestova village, Vushtrri.

Challenged decision

2. The Applicant challenges the non-execution of Judgment PA1 no. 966/2013 of the Court of Appeal in Kosovo, dated 27 November 2013, which was served on the Applicant on 4 December 2013.

Subject matter

3. The Applicant, without referring to a specific Article of the Constitution, claims that his rights have been violated by the challenged decision since the Judgment of the Court of Appeal in Kosovo, dated 27 November 2013, was not executed in the part which ordered the restitution of a stolen tractor.

Legal basis

4. The referral is based on Article 113 (7) of the Constitution and Article 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 26 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 10 June 2014, the President of the Court by Decision No. GJR. KI94/14 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI94/14 appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 20 June 2014, the Court notified the Applicant of the registration of the Referral and requested him to submit additional information, namely on measures he has taken in order to return the motor vehicle, and to provide a copy of the Judgment PP no. 628/2012 of the Mitrovica Court.
8. On 5 November 2014, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant did not describe the facts of the case. Instead he stated "*until today I have not been satisfied with the court decisions, therefore from now on I address to you, hoping that his court does not work and cooperate with thieves*".
10. The Applicant attached copies of several documents from which some facts may be asserted.

11. In fact, on 1 March 2012, the Branch in Vushtrri of the Basic Court in Mitrovica issued an order for temporary sequestration of a tractor of type "Massey Ferguson", until another decision of the Court.
12. On 19 July 2013, the Basic Court (Judgment P. no. 112/2012) found F. B. guilty for, injuring the Applicant and taking tractor of type "Massey Ferguson". The Basic Court imposed one year prison sentence to the accused F. B. and ordered him to "return to Sadat Ademi the tractor within 30 days after the judgment become final."
13. On 27 November 2013, the Court of Appeal in Kosovo (PA1. no. 966/2013) rejected the appeal of accused F. B. and confirmed judgment of the Basic Court.
14. On 27 June 2014, the Applicant informed the Court that he has not taken any further measures to return his motor vehicle. However, the Applicant has not submitted the requested copy of the Judgment PP no. 628/2012 of the Mitrovica Court.

Applicant's allegations

15. The Applicant claims that "until today my rights have been violated, my device 'tractor' has not been returned to me, I have no other incomes."

Preliminary assessment of admissibility of the Referral

16. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
17. The Court notes that the Applicant did not request the competent court to enforce the judgement of the Basic Court (Judgment P. no. 112/2012) issued on 19 July 2013 which became final on 27 November 2013.
18. 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."

19. The Court also refers to Article 47 (2) of the Law, which provides:

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

20. Furthermore, the Court also refers to Rule 36 (1) a) of the Rules of Procedures of the Constitutional Court (hereinafter, the Rules) which foresees:

"(1) The Court may only deal with Referrals if: (a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or"

21. The Court notes that the Applicant has not taken any legal measures in order to execute the Judgment (PA1 no. 966/2013) of the Court of Appeal in Kosovo, dated 27 November 2013, on returning his motor vehicle.
22. Thus, the Court considers that the Applicant has not exhausted all effective remedies under Kosovo law, in order for the Court to proceed with his allegation about non-execution.
23. The Court recalls that, in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113 (7) of the Constitution and other legal provisions mentioned above.
24. The rationale for the exhaustion rule is to afford the concerned authorities, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., *Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
25. It follows that, pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) a) of the Rules, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) a) of the Rules, in its session held on 5 November 2014, unanimously

DECIDES

- I. TO REJECT 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. Dr. Enver Hasani