



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

Pristina, 23 May 2013
Ref. No.: RK410/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KIo1/13

Applicant

Betim Ramadani

**Constitutional Review of the Notification of the State Prosecutor,
KMLC.no. 106/2012, dated 23 October 2012.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Betim Ramadani (hereinafter, the "Applicant"), represented by Mr. Shevqet Xhelili, a practicing lawyer from Gjilan.

Challenged decision

2. The Applicant challenges the Notification of the State Prosecutor, KMLC. no. 106/2012, of 23 October 2012, which was served on him on 27 October 2012.

Subject matter

3. The Applicant alleges that the abovementioned notification violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"), namely Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").

Proceedings before the Court

5. On 3 January 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").
6. On 30 January 2013, the President of the Constitutional Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 27 February 2013, the Referral was communicated to the State Prosecutor.
8. On 15 April 2013, the President of the Constitutional Court replaced Judge Robert Carolan with Judge Almiro Rodrigues as Judge Rapporteur and Judge Arta Rama-Hajrizi with Judge Enver Hasani as Review Panel member.
9. On 30 April 2013, 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 2009, the Applicant entered into an agreement with Xh. K. to rent a business premises for ten years, which he did, and in addition, he made some

investments. However, in respect to these premises there was an ongoing court proceeding as to the confirmation of the ownership between Xh. K. and Z. Y.

11. On 15 March 2011, the Municipal Court in Gjilan (Decision C. no. 420/2005) declared that Xh. K. had withdrawn his claim for confirmation of ownership. Consequently, Z. Y. filed a request to execute that decision and to remove the Applicant from the business premise which he had rented from Xh. K.
12. The Applicant alleges that, on 27 December 2011, the Municipal Court in Gjilan (Decision E. no. 2907/2011) allowed the execution of its Decision C. no. 420/2005 of 15 March 2011.
13. Meanwhile, on 1 February 2012, Z. Y. once again filed a request to execute the Decision C. no. 420/2005 of 15 March 2011, and requested to remove the Applicant from the business premise.
14. On 15 February 2012, the Applicant, as a third party, filed an objection to the request for execution. The Municipal Court rejected that objection as unfounded (Decision E. no. 2907/2011 of 5 March 2012).
15. Thus, on 20 March 2012, the Applicant complained against that decision to the District Court in Gjilan, which rejected the Applicant's complaint as unfounded and upheld the decision of the Municipal Court of 5 March 2012 (Decision E. no. 2907/2011).
16. On 4 May 2012, the Municipal Court in Gjilan notified the Applicant that the execution of the decision was in force and would take place on 4 June 2012.
17. On 31 May 2012, the Applicant filed a proposal to the Municipal Court in Gjilan to postpone the execution. The Municipal Court in Gjilan rejected the proposal to postpone as unfounded (Decision E. no. 2907/2011 of 4 June 2012).
18. On 8 June 2012, the Applicant complained against the decision of the Municipal Court to the District Court in Gjilan, which rejected the complaint as unfounded (Decision Ac. no. 222/2012 of 19 September 2012).
19. The Applicant alleges that, on 11 June 2012, the Municipal Court executed the decision of the Municipal Court and removed the Applicant from the business premises which he was renting. No evidence in the case file supports this allegation of the Applicant.
20. On 10 October 2012, the Applicant filed a request for protection of legality with the State Prosecutor. The State Prosecutor rejected this request, because it did not find any grounds for the request for protection of legality (Notification KMLC. No. 106/2012 of 23 October 2012).

Applicant's allegations

21. The Applicant alleges that he *"[...] was removed with force by the executive authorities, the Municipal Court of Gjilan, from the business premise, which he used based on the contract of 4 February 2009, and without any court procedure."*
22. In this respect, the Applicant requests the Constitutional Court *"[...] to annul all decisions of execution procedure of Municipal Court in Gjilan and of District Court in Gjilan and order the Municipal Court in Gjilan to allow the use of the rented business premise based on the rights and obligations derived from the contract of 4 February 2009."*

Admissibility of the Referral

23. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 113 (1), which establishes that *"the Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties"*.
25. The Court also refers to Article 48 of the Law on Court, which provides that *"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. In addition, the Court also takes into account Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*
27. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
28. In sum, the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

29. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by the regular courts.
30. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. The Court further notes that the Applicant did not initiate any proceedings in respect to his contractual rights and obligations against Xh. K. The Municipal and District courts in Gjilan only determined the ownership right between Xh. K. and Z. Y.
32. In sum, the Applicant did not show why and how his rights as guaranteed by the Constitution have been violated. A mere enumeration of certain constitutional provisions cannot be considered as a constitutional complaint. Thus, the matter was not referred to the Court *in a legal manner* by the Applicant because pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

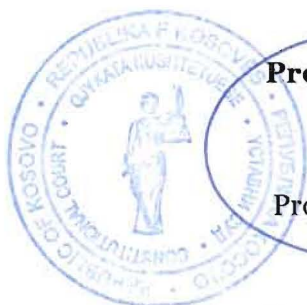
The Constitutional Court, pursuant to Article 113 (1) of the Constitution, Article 48 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 23 May 2013, unanimously

DECIDES

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

Judge Rapporteur


Almiro Rodrigues



President of the Constitutional Court


Prof. Dr. Enver Hasani