



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 12 May 2014

Ref.no.:RK 621/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI121/13

Applicant

Lumturije Morina

**Constitutional review of the Decision of the Court of Appeal of Kosovo,
AC. No. 1791/13, of 12 July 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, 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 Applicant is Ms. Lumturije Morina (hereinafter: the Applicant), who is represented by Mr. Teki Bokshi, lawyer from the Municipality of Gjakova (hereinafter: the Applicant's representative).

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo, AC. No. 1791/13, of 12 July 2013, which according to the Applicant, was served on her on 1 August 2013 and Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council.

Subject matter

3. The subject matter is the request for the constitutional review of the Decision of the Court of Appeal, AC. no. 1791/13, of 12 July 2013, which in the execution procedure against the Applicant, in the capacity of a debtor, rejected her appeal as ungrounded and upheld the Decision of the Basic Court in Gjakova, E. No. 934/12, of 8 March 2013. The Applicant also requests the constitutional review of the Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council.

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56. 2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 7 August 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 August 2013, the President by Decision GJR. No. KI121/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI121/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 18 September 2013, the Court notified the Applicant's representative of the registration on the Referral and requested from him to sign the official Referral form, since the form submitted on 7 August 2013 was not signed by him.
8. The Applicant's representative has not responded to the request of the Court.
9. On 21 February 2014, the Court requested from the Applicant's representative to submit to the Court all decisions, related to the Applicant's Referral.
10. On 4 March 2014, the Applicant's representative submitted to the Court the Referral form signed by him.
11. On 13 March 2014, after having reviewed the preliminary report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. According to the incomplete documentation, which was submitted to the Court by the Applicant, and which is related only to the execution procedure, the Court came up with these facts.
13. The Applicant filed an appeal to the Basic Court in Gjakova against the Decision on allowing the execution, E.No.934/12, of 1 March 2013, where the Applicant appears in the capacity of the debtor.
14. On 8 May 2013, the Basic Court in Gjakova, deciding upon the Applicant's appeal against the Ruling on allowing the execution, E. no. 934/12, of 1 March 2013, rejected the appeal as ungrounded and considered that the Applicant withdrew the appeal filed against the Decision E no. 934/12, of 1 March 2013, in entirety. The Court further stated:

“The debtor did not attach to the appeal the evidence on payment of fees. ...since the debtor did not pay the court fee within the time limit set forth by the conclusion of 22.03.2013, in compliance with Article 19 of LCP, as well as Article 102 of the LCP, in conjunction with Article 22 of LCP, it was decided as per enacting clause of this Ruling.”

15. On 12 July 2013, the Court of Appeal of Kosovo, deciding upon the Applicant's appeal rendered Decision AC. no. 1791/13, thereby rejecting as ungrounded the appeal. The Court further in its Judgment added:

“[...] this Court considers that the appealed allegations of the debtor do not stand, because based on provision of Article 2.2 of Administrative Direction no. 2008/02 on Unification of Court Fees of Kosovo Judicial Council...while in provision of Article 6.5 of the abovementioned Direction it is provided that in case these fees are not paid until the final deadline, the court will dismiss the application for which the respective fee was not paid and in the present case it is the court fee for the appeal under Article 10.11 of this Direction.

[...]

The first instance court has not committed any essential violation of the contested procedure provisions, which this Court reviews ex-officio.”

Applicant's allegations

16. The Applicant alleges that by Decision of the Court of Appeal, AC. No. 1791/13, of 12 July 2013, were violated her rights protected by the Constitution, as follows:

Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo and concretely human rights and freedoms, guaranteed by the European Convention for Protection of

Human Rights and Fundamental Freedoms and its protocols, in particular Protocol 1, Article 1.

17. The Applicant further states:

“The court fees and fiscal liabilities can be determined exclusively by Law promulgated by and not in any way by Administrative Direction no. 2008/02 on Unification of Court Fees of Kosovo Judicial Council”.

18. The Applicant concludes by requesting from the Constitutional Court that:

- *“Annul the Ruling of the Basic Court in Gjakova, E. no. 934/12 of 08.05.2013*
- *Annul the Ruling of the Court of Appeal, Ac.no.1791/13 of 12.07.2013, and*
- *Annul the Administrative Direction no.2008/02 on Unification of Court Fees of Kosovo Judicial Council.”*

Admissibility of Referral

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

Allegation regarding the request for annulment of the Administrative Direction no. 2008/02 on unification of the court fees of the Kosovo Judicial Council

20. With respect to the Applicant's Referral for annulment of the Administrative Direction no. 2008/02 on unification of the court fees of Kosovo Judicial Council, the Court refers to Article 113, paragraphs 1, 2 and 7 of the Constitution, which provides that:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties,

2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;

(2) the compatibility with the Constitution of municipal statutes.

[...]

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.*"

21. Regarding the Applicant's Referral to annul the Administrative Direction no. 2008/2 on unification of court fees of Kosovo Judicial Council, the Court reiterates that only the authorized parties under Article 113. 2 of the Constitution are entitled to submit the question of the compatibility of laws with the Constitution. Therefore, the Applicant is not authorized party under Article 113. 2 of the Constitution (See Case KI34/11, Applicant Sami Burnjaku Constitutional Court Resolution on Inadmissibility, of 8 December 2011).

Allegation regarding decisions of the Basic Court in Gjakova and the Court of Appeal of Kosovo

22. With respect to Applicant's allegations that the Basic Court in Gjakova and the Court of Appeal of Kosovo through their decisions have violated her rights, guaranteed by the Constitution, the Applicant must show that she has fulfilled the requirements of Article 113.7 of Constitution, as well as Article 47.2 and 49 of the Law. From the case file, it can be seen that the Applicant has presented facts that she has used all available legal remedies under the applicable laws and that the Referral was submitted within the time limit of (4) months, as provided by the Law and the Rules of Procedure.
23. The Court also takes into account Rule 36.2 of the Rules of Procedure, which provides that:

"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...], or
(d) when the Applicant does not sufficiently substantiate his claim".
24. The Applicant has not provided any *prima facie* evidence which would point to a violation of her constitutional rights (see *mutatis mutandis* Vanek vs. Slovak Republic, no. 53363/99, Application of 31 May 2005). The Applicant does not state in which way Article 22, 31 and 54 of the Constitution and Protocol 1, Article 1 were violated.
25. The Applicant has failed to prove in what manner the non-payment of court fees led to violation of her constitutional rights.
26. In this regard, the Constitutional Court reiterates that under the Constitution, it is not its duty to act as a court of fourth instance, when reviewing the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR Judgment of 21 January 1999; see also case KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 7 February 2011).

27. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See *inter alia*, European Commission on Human Rights, *Edwards v. United Kingdom*, App. No 13071/87, of 10 July 1991).
28. For all the reasons mentioned above, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and that the Applicant has not sufficiently substantiated her allegations.
29. The Court finds that the Referral does not meet the admissibility requirements, as required by Article 113.1 of the Constitution and Rule 36 (2) b) and d) and 36 (3) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.1 of the Constitution, Article 20 of the Law and Rule 36 (2), b) and d) and Rule 36 (3) c) of the Rules of Procedure, on 25 March 2014, 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. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Altay Suroy

Prof. Dr. Enver Hasani

