



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 21 February 2014
Ref.no.:RK 552/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI131/13

Applicant

Luan Spahiu

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. no. 313/2012 dated 17 April 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
Arta Rama-Hajrizi, Judge

The Applicant

1. The Applicant is Mr. Luan Spahiu from Prizren.

Challenged Decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. no. 313/2012 dated 17 April 2013, which was served on him on an unspecified date.
3. The Applicant also challenges the Judgment of the District Court in Prizren Ac. No. 200/2011 dated 18 June 2012 and the Municipal Court in Prizren C. No. 780/09 dated 12 June 2010.

Subject Matter

4. The subject matter of the Referral submitted to the Constitutional Court (hereinafter: "the Court") is the constitutional review of the challenged decision, which allegedly was adopted in violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention of Human Rights (hereinafter "the Convection").

Legal basis

5. The Referral is based on Art. 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court, and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter "the Rules of Procedure").

Proceedings before the Court

6. On 23 August 2013, the Applicant submitted the Referral to the Court.
7. In his referral the Applicant also has submitted a petition for recusal of judges Kadri Kryeziu and Altay Suroy, as follows:

"I also demand from the Court to exempt judges Kadri Kryeziu and Altay Suroy Recepoglu in rendering the decision on the constitutional review of the two judicial acts, due to the reason that Y H. President of the Basic Court in Prizren, who exerted his influence in decisions on both courts, may influence the Constitutional Court judge Kadri Kryeziu, since they are friends. Judge Altay Suroy Recepoglu may be under influence of the judge F. S., who is judge at the Special Chamber, and the latter had influence on rendering court decisions, because he is related to the claimant..."

8. On 30 August 2013, by Decision No. GJR. KI 131/13 the President appointed Deputy President Ivan Čukalović as Judge Rapporteur and by Decision No. KSH KI 13/13. On the same date the President appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Arta Rama-Hajrizi.
9. On 23 September 2013, the Court notified the Applicant the referral had been registered with the Court.

10. Also on 23 September 2013, the Court notified the Supreme Court of the referral.
11. On 2 October 2013, the Applicant submitted a request for urgency in proceedings of his case before the Court. The Applicant requested the Court to *“take the execution case E.no 1476/12 of the Basic Court in Prizren and review the constitutionality of decision rendered by this court and to stop any further actions in the executive procedure by judge A. H. until the constitutionality of the rendered decisions be reviewed by the Constitutional Court, as the court has rendered the decision to sell the immovable property of the debtor Luan Spahiu on 30 October 2013.”* In addition, the Applicant has submitted a number of documents related to the execution case E. no. 1476/12.
12. On 19 November 2013, the statements were taken from Judges Kadri Kryeziu and Altay Suroy, consequently in accordance with Rule 7 of the Rules of Procedure the Court rejected the Applicant’s request for recusal of the above mentioned judges.
13. On 19 November 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

14. On 12 June 2010, the Municipal Court in Prizren, issued a Judgment C. No. 780/09 and approved as grounded the claim suit of A. R. against the Applicant ordering him to pay the claimant A. R. the debt of 34,000 € with legal interests. At the same time the Municipal Court rejected as ungrounded the counter - claim suit of the Applicant, by which he demanded that the claimant/counter-respondent A. R. pay the amount of 16,000 Euros of debt.
15. In the reasoning the Municipal Court stated, inter alia, that *“it has been proven that the respondent Luan Spahiu has admitted to the debt of 34.000 €. He is under obligation to repay such debt, because he has admitted to this debt before witnesses heard in the procedure, and a process report was compiled on this agreement on 22.05.2008, according to which the respondent has assumed the obligation of paying back the debt to the claimant in installments.”*
16. The Municipal Court in the reasoning recalled that *“pursuant Article 295, paragraph 1 of the Law on Obligations and Torts..., and it is a general rule that the obligation ceases to exist when it is fulfilled, and with the other law, the renting party is bound to pay the rent on deadlines set by contract or stipulated by law. According to Article 324, paragraph 1 of the Law, the debtor is in default when he does not repay debt within deadline stipulated... “*
17. On 2 June 2011, the Applicant submitted an appeal against the judgment of the Municipal Court in Prizren dated 12 June 2010. In his appeal the Applicant claimed that the challenged judgment was adopted in violation of the contested procedure. The Applicant also claimed that that the Municipal Court in Prizren

had made erroneous and incomplete factual determination and erroneous application of material law.

18. On 18 June 2012, the District Court in Prizren issued the Judgment Ac. No.300/2011 and rejected the appeal of the Applicant as ungrounded.
19. In its reasoning the District Court in Prizren stated, inter alia, that *“The District Court upholds the factual determination and the legal stance of the first instance court in their entirety, since from the evidence produced and reviewed, it is clear that the respondent/counter-claimant owes the claimant/counter-respondent 34.000 Euros, while the respondent/counter-claimant has failed to prove that he is owed 16.000 Euros by the claimant/counter-respondent, also as found by this Court.”*
20. Following that, on 16 July 2012, the Applicant submitted a request for revision to the Supreme Court of Kosovo against the District Court Judgment. In his request the Applicant alleges substantial violations of contested procedure and erroneous application of material law.
21. On 17 April 2013, the Supreme Court issued the judgment Rev. No 313/2012 and rejected as ungrounded the revision of the Applicant filed against the Judgment of the District Court in Prizren, AC. No. 300/2011 of 18 June 2012.
22. The Supreme Court in the reasoning of its judgment stated, among other things that *“From the case files, it may be derived that the first instance court has found that the litigating parties have both claims on debts towards each other. On 22 May 2008, a group of people assembled... the present people, including the respondent/counter-claimant Luan Spahiu, agreed during the meeting that the latter owes the claimant/counter-respondent A.R. the amount of 34,000 €, which he would pay back, and that such payback would be made in installments: 10,000 Euros in September 2009, 10,000 Euros in September 2010, 10,000 Euros in September 2011, and 4,000 Euros in September 2012. Nevertheless, Luan Spahiu agreed to pay the whole amount even earlier, if he sold his house, which was already put up for sale. In relation to this meeting, a process report was compiled, which was signed by all present (except A.R.), and such facts were found by the Court also based on witness testimonies.*
23. According to the findings of the Supreme Court, the second instance Judgment does not contain any violations of contested procedure reviewed ex officio. There are no grounds either in the claim of substantial violations of contested procedure provisions as alleged in the revision, namely that the judgment does not reason upon decisive facts relevant to rendering a lawful decision. The Supreme Court stated in its reasoning as follows: *“... not only it has been mentioned in the process report of 22 May 2008 that the respondent/counter-claimant Luan Spahiu owes the claimant/counter-respondent A. R., ..., but even the respondent/counter-claimant Luan Spahiu stated himself that he will pay the debt even earlier, if he sells his house, and he declared that in his own will, in the presence of witnesses. Therefore, the contents of the process report have been assessed accurately, and rightfully taken as proof in the proceedings.”*

24. According to the documents the Applicant submitted to the Court on 2 October 2013, it appears that on unspecified date, the Applicant submitted the request for recusal of the judge A.H. from the enforcement proceedings that was initiated before the Basic Court in Prizren. These proceedings were related to the enforcement of the Municipal Court Judgment dated 12 June 2010. In the same request the Applicant also asked recusal of the President of the Basic Court in Prizren.
25. It appears further that on 5 September 2013, the Basic Court in Prizren issued a decision and rejected the Applicant's request to recuse the judge A.H. from the proceedings and deciding the executive matter E. no 1476/12 pending before the Basic Court in Prizren.
26. On 16 September 2013, the Applicant submitted the appeal against the Decision of 5 September 2013.
27. Furthermore, on 23 September 2013, the President of the Court of Appeals issued a ruling and rejected the Applicant's request to recuse the President of Basic Court in Prizren and the judge A.H. from the Basic Court in Prizren. It was mentioned, *inter alia*, that "*the request for recuse has not explicitly and specifically provided the reasons for recuse as provided by Article 69.2 of the Civil Procedure Code. From the case file it is found that the debtor has abused his procedural rights...*"

Applicant's Allegation

28. The Applicant alleges that his right to a fair trial has been violated. The Applicant claims that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention of Human Rights.
29. The Applicant alleges that "*whole process was fabricated by the former president of the District Court in Prizren, now President of the Basic Court in Prizren,... and he influenced all from the Municipal Court to the Supreme Court, and during the appeal procedure before the District Court in Prizren.*" The Applicant further alleges that "*It is surprising how in both first and second court instances, the judges and the claimant are Bosnian, it is impossible to not suspect, considering the percentage of Bosnian judges working...*"

Assessment of the admissibility of the Referral

30. In order to be able to adjudicate the Applicant's Referral the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Court and the Rules of Procedure.
31. The Court recalls that the Applicant's complains that his right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the European Convention on Human Rights ("the Convention") has been violated.

32. In this regard, the Court notes that the Applicant has used all available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court in Pristina has taken into account and answered his appeals on the points of law.
33. The Court also notes that the both Basic Court in Prizren and the President of the Court of Appeals addressed the Applicant's complaints related to the alleged violation of his right in an independent and impartial tribunal during the enforcement procedure.
34. The Constitutional Court recalls that it is not to act as a court of fourth instance, when considering the decisions taken by 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*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
35. The Court notes that by the bare statement that "*It is surprising how in both first and second court instances, the judges and the claimant are Bosnian,*" the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
36. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
37. Accordingly, pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, 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

President of the Constitutional Court

Prof. Dr. Ivan Čukalović

Prof. Dr. Enver Hasani

