



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

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Pristina, 24 March 2014  
Ref.no.:RK578/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI139/13**

Applicant

**Zorica Đokić**

**Constitutional Review of the State Prosecutor Notification,  
KMLP. I. No. 8/13, dated 3 May 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 Referral was submitted by Mrs. Zorica Đokić (hereinafter: the “Applicant”), from Zaječar, Serbia.

## **Challenged decision**

2. The Applicant challenges the Notification of the State Prosecutor, KMLP. I. No. 8/13 of 3 May 2013, and the Judgment of the District Court in Gjilan, Kž. No. 251/2012 of 19 November 2012.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which the Applicant claims to have violated her constitutional rights guaranteed by: Article 3 [Equality before Law]; Article 19 [Applicability of International Law]; Article 24 [Equality before Law]; Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions]; Article 54 [Judicial Protection of Rights]; Article 56 [Fundamental Rights and Freedoms during a State of Emergency]; Article 156 [Refugees and Internally Displaced Persons] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) and pertinent Articles of the European Convention on Human Rights (hereinafter: ECHR), namely Article 6, paragraph 1 [Right to Fair Trial]; Article 13 [Right to Effective Legal Remedies]; Article 8 [Right to Respect for Private and Family Life]; Article 14 [Prohibition of Discrimination]; Article 1 of Protocol 1 to the ECHR [Protection of Property] and Protocol 12 [General Prohibition of Discrimination].

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court (hereinafter: the “Law”) and Rule 56.2 of the Rules of Procedure of the Court (hereinafter: the “Rules of Procedure”).

## **Proceedings before the Court**

5. On 3 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 24 September 2013, the President of the Court, by Decision No. GJR. KI139/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision No. GJR. KSH139/13, appointed the Review Panel composed of of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 10 October 2013, the Court requested additional documents and clarification from the Applicant.
8. On the same date, the Supreme Court was informed about the Referral.
9. On 18 October 2013, the Applicant replied to the Court.

10. On 20 January 2014, 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**

11. In 2005, the Applicant filed a claim with the Housing and Property Claims Commission of the Housing and Property Directorate (hereinafter: "HPD") to evict F. I. from an apartment in Banja e Klllokotit, which according to the Applicant, was owned by her.
12. On 24 February 2005, the HPD rendered decision No. HPCC/D/170/2005/C requesting that that the property to be freed of "*any other person occupying the property... within a deadline of 30 (thirty) days from the receipt of this order*", otherwise such persons would be evicted forcefully. F. I. filed a claim against this decision.
13. On 18 February 2006, the HPD, by decision HPCC/REC/58/2006, rejected the claim of F. I. for review of decision as ungrounded.
14. On 15 September 2006, the HPD handed over the keys of the property to the Applicant.
15. On 6 October 2006, the Municipal Public Prosecution in Gjilan (hereinafter: MPP) filed an indictment Kt. No. 1475/2006 with the Municipal Court in Viti (hereinafter: Municipal Court) against F. I. for violation of inviolability of apartment, and for removal or damage of official stamp or mark, as provided by Article 166, respectively 322 of the Criminal Code of Kosovo.
16. On 27 April 2008, the Applicant filed a report with the Police Station in Viti, thereby demanding that F. I. "*be removed from my apartment and to be held liable criminally and materially*".
17. On 29 July 2009, the MPP in Gjilan had filed another indictment, Kt. No. 1235/2009 with the Municipal Court against F. I., for violation of inviolability of apartment; unlawful occupation of immovable property; and removal or damage of official stamp or mark, as provided by Article 166, respectively 259 and 322 of the Criminal Code of Kosovo. The representative of the Applicant to the session, J. Z., had supported the allegations of the MPP and criminal prosecution for enjoyment of her property rights.
18. On 4 July 2012, the Municipal Court rendered a judgment K. No. 320/2006, finding F. I. guilty of criminal offences of violation of inviolability of apartment, and damage of official stamp or mark. On the criminal offence of unlawful occupation of immovable property, the Municipal Court found F.I. not guilty, because "*there was an absolute statutory limitation..., because the offence was perpetrated in June 1999, and the time limit for criminal prosecution is over.*"
19. Against this judgment, F. I. had filed a complaint with the District Court in Gjilan (hereinafter: District Court), thereby demanding that the Judgment of

the Municipal Court be annulled (K.No.320/2006) and that the case to be returned for retrial, or be amended for him to be acquitted.

20. On 19 November 2012, the District Court, by Judgment Kž.No.251/12, amended the judgment of the Municipal Court (K.No.320/2006) and acquitted F. I. from all charges, due to the absolute statutory limitation of criminal offences. According to the District Court, *“from the case files it may be derived that more than 6 years have passed from the commission of the criminal offence until now, while for the criminal offence for which the defendant was found guilty, relative statutory limitation applies upon three years from the commission of the criminal offence, according to Article 91, paragraphs 1 and 6 of the same Law [Criminal law of Kosovo]. In this case, more than 6 years have passed from the criminal offence, which means that for the criminal prosecution the absolute statutory limitation was reached”*.
21. On 17 July 2013, the Applicant filed a request for protection of legality with the Office of the Chief State Prosecutor, due to violation of Criminal law of Kosovo, and the Criminal Procedure Law of Kosovo.
22. On 3 May 2013, the State Prosecutor, by Notification KMLP. I. No. 8/13, notified the Applicant that there are no grounds for initiating a request for protection of legality. According to it, *“the District Court in Gjilan with Judgment Ap.251/2012 dated 19.11.2012, has correctly found that in this particular case the statutory limitation for criminal prosecution has been reached because for the criminal offenses, the accused is found guilty for by the Judgment of the first instance court P. No. 320/2006 dated 04.07.2006, the punishment of up to 3 years of imprisonment is provided, whereas in this particular case more than 6 years have passed since the time the criminal offense was perpetrated... while the “Claim of the submitter of request pursuant to the violation of the criminal procedure, because the appeal of the accused against the Judgment of the first instance was not serviced to her thus she could not answer the appeal, has no effect”*.

### **Applicant’s allegations**

23. The Applicant claims that in the regular court proceedings, her constitutional rights, guaranteed by Articles 3, 24, 31, 32, 46, 54, 56, 156, 19 and 53 of the Constitution and Articles 6, 13, 8, 14 of the ECHR, and Article 1 of Protocol 1 to the ECHR, and rights guaranteed by Protocol 12, were violated.
24. The Applicant request the Court to *“find this Referral admissible, and find the judgments of Kosovo courts mentioned above unconstitutional”*.

### **Admissibility of the Referral**

25. 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.
26. In this respect, the Court refers to Article 48 of the Law, which provides:

*"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."*

27. Furthermore, Rule 36 (1) and (2) of the Rules of Procedure provide:

*(1) "The Court may only deal with Referrals if*

*...*

*c) the Referral is not manifestly ill-founded*

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*...*

*d) when the Applicant does not sufficiently substantiate his claim."*

28. In the present case, the Court notes that in relation to the same immovable property, a civil proceeding is ongoing before pertinent regular courts, where one of the parties included is the legal entity "Banja e Kllokotit", as a claimant to the property. However, based on the reply from the Applicant submitted to the Court on 18 October 2013, the Applicant complains about the criminal proceedings. In relation to the criminal proceedings, the Applicant complains against the conclusion of the State Prosecutor that "[...] more than 6 years have passed since the time the criminal offense was perpetrated [...]" and allege that the decision of the State Prosecutor violate her rights, without explaining why and how the challenged decision violates her rights.
29. 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, the Constitutional 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 the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).
30. In respect to the criminal proceedings, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by the regular courts. Therefore, the Court cannot conclude that the relevant proceedings before the regular courts were in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).
31. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the State Prosecutors notification or the District Court proceedings infringed her rights and freedoms protected by the Constitution.
32. It follows that the Referral is inadmissible because it is manifestly ill-founded, pursuant to Rule 36 (1) c) and 36 (2) d) of the Rules of Procedure.



## FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) c), 36 (2) d) and 56.2 of the Rules of Procedure, on 20 January 2014, unanimously

## DECIDES

- I. TO DECLARE the Referral 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**

**President of the Constitutional Court**

  
Dr. sc. Kadri Kryeziu

  
Prof. Dr. Enver Hasani

