



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 24 April 2014
No. Ref.VTK566/14

DECISION TO STRIKE OUT THE REFERRAL

in

Case no. KI143/13

Applicant

Nebih Sejdiu

**Constitutional review of an unidentified ruling of
an unidentified public authority**

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 filed by Nebih Sejdiu from Podujevo (hereinafter, Applicant).

Challenged decision

2. The Applicant does not challenge any ruling of any public authority, although claiming that his rights guaranteed by law and Constitution have been violated.

Subject matter

3. The subject matter is an alleged enjoyment of rights to 20% of the proceeds of privatization of SOE “Ramiz Sadiku” (hereinafter, SOE “Ramiz Sadiku”)

Legal basis

4. The Referral is based upon Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 20, 22.7, 48 and 49 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 29 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 09 September 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 24 September 2013, the President, by Decision no. GJR.KI. 143/13 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same day, the President by Decision no. KSH.143/13 appointed the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 21 October 2013, the Court informed the Applicant of the registration of Referral and, pursuant to Rule 36 (4) of the Rules of Procedure, requested him to clarify and complete his Referral, namely *„to submit to the Court all documents related to your case, including the decision that you are challenging“*. On 6 November, that letter was returned, with the notice that the Applicant was not living in the address given in the Referral.
8. On 3 December 2013, a second letter was sent to the Applicant, insisting on complementing and clarifying his referral, as previously requested, with the following warning: *“If you fail to provide the requested information and documents, (...) the Court will understand that you are not anymore interested in further proceeding with your Referral“*.
9. On 07. February 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

10. On 9 September 2013, the Applicant filed a Referral with the court using the “Referral form for the submission of a referral”. As to the description of the

facts, he only wrote: *“Payment of 20%. From the selling of K.N.I. Ramiz Sadiku”*. In relation to the justification of the Referral and alleged breaches of the Constitution, he only wrote: *“Violation of human rights envisaged by the law on privatization and Constitution”*. Finally, the Applicant filled in the statement of the relief sought, writing only: *“Payment of 20% from the privatization amount of K.N.I. Ramiz Sadiku”*.

11. The Applicant enclosed a copy of a work booklet with the following data: *“Serial number SK. 00 148458; Registration number 6456 and Issuing place and date Podujeve 14.03.1977”*.
12. On 21 October 2013 and 3 December 2013, the Court requested the Applicant to complete and clarify the Referral. In the second date, the Applicant was warned that if he would fail to provide the requested information and documents, *„the Court will understand that you are not anymore interested in further proceeding with your Referral“*.

Applicant's allegations

13. The Applicant claims that there was a *“violation of human rights envisaged by the law on privatization and Constitution”*. However, he does not indicate what rights were violated or what public authority has allegedly committed such a violation.
14. The Applicant requests the Court the *“Payment of 20% from the privatization amount of K.N.I. Ramiz Sadiku”*.

Preliminary assessment of admissibility of the Referral

15. The Court first examines whether the applicant has met all requirements as provided by the Constitution, and further specified by the Law and the Rules of Procedure of the Court.
16. In this regard, the Court refers to the Article 113.7 [Jurisdiction and Authorized Parties] 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.”

17. The Court also 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.”

18. The Court also takes into account Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure, which provide:
“(…)

(2) The referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.

(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached."

19. In addition, the Court takes into consideration Rule 32 (4), which foresees:

"The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy."

20. The Court notes that the Applicant has failed to provide and file any information and documentation proving what rights and freedoms were violated and by which public authority they were allegedly violated; what was the process of exhaustion of legal remedies and what were the main allegations and on what grounds they are substantiated
21. The Court further notes that this so called "Referral" appears in the Referral format adopted by the Court for complaining against violation of protected constitutional rights by the public authorities. However, it does not indicate the pertinent information and relevant evidence in order to the Court to assess even the admissibility requirements.
22. Thus, having in mind the legal nature and scope of the Constitutional Court, the "Referral" would not fall under the preliminary consideration of the Court; nevertheless, the Court will take it for the sake of explanation purposes.
23. The admissibility requirements are foreseen in the Constitution and are further developed in the Law and the Rules of Procedure, as abovementioned.
24. However, the Applicant failed to specify which rights and freedoms have been violated and which public authority act he is contesting. In fact, he does not disclose any appearance either of a violation of the rights guaranteed by the Constitution or of the act of public authority subject to review.
25. Moreover, the Applicant has neither substantiated a case, where he considers himself a victim of a violation of the Constitution (See Scordino v. Italy (no. 1) [GC], § 179.), nor he has attached the necessary supporting information and documents.
26. In fact, the proceedings before the Constitutional Court are adversarial in nature. Therefore, it is up to the Applicant to substantiate the factual arguments (by providing the Court with the necessary factual evidence) and also the legal arguments (explaining why and how, in his view, the Constitution provisions have been breached). The Court is responsible for establishing the facts; it is up

to the Applicant to provide the Court with necessary information and relevant documents.

27. Before all the foregoing, it is not up to the Court to build the case on behalf of the Applicant. On the contrary, it is up to the Applicant, while referring the matter to the Court, at least to comply with all requirements on admissibility of a referral.
28. Furthermore, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113 (7). The purpose of the exhaustion rule is allowing the opportunity to a public authority, including the regular courts, of preventing or settling alleged violations of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural frame work. (See *Selmouni v. France* [GC], § 74; *Kudła v. Poland* [GC], § 152; *Andrášik and Others v. Slovakia*).
29. The principle of subsidiarity requires that the Applicants exhaust all procedural possibilities in the regular proceedings, either administrative or judicial, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right.
30. Thus, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a waiver of the right to object the violation and complain. (See Resolution, in Constitutional Court Case No. KIO7/09, *Demě Kurbogaj and Besnik Kurbogaj*, Review of Supreme Court Judgment Pkl.nr. 61/07 of 24 November 2008, paragraph 18).
31. The Applicant, in the instant case, has not showed having exhausted all the remedies provided by the regular legal system.
32. Therefore, the Court, taking into account all the above, should conclude that the so called referral should be preliminarily rejected as inadmissible.
33. The Court recalls that, upon information on the registration of his Referral, the Applicant was obliged to communicate any change of his address.
34. In addition, a second letter was sent to the Applicant, warning him that, if no information and documents provided, the Court would understand that he was not anymore interested in further proceeding with his Referral. The Court further notes that the Applicant has not answered that second letter
35. In sum, the Court considers that the abovementioned “Referral” does not reach the minimum threshold to be considered a Referral, by which the supposed matter should be referred. Moreover, the Court further considers that it is legitimate to assume that the Applicant is not anymore interested in further proceeding with his Referral.

36. In addition, the way the “Referral” has been filed could be seen, in a strict approach, as an abuse of the right to complain. The Constitutional Court is bound by Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.
37. In fact, the European Court of Human Rights established that *“any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application”*. (See *Mirolubovs and Others v. Latvia**, §§ 62 and 65).
38. However, the Court considers that, in that case, it is not advisable to adopt such a strict approach; meanwhile, it is important for the Applicant to be aware of, as it looks like the Applicant misapprehended the role of the Constitutional Court and the nature of the constitutional justice legal working frame as established by the Constitution, the Law and the Rules of Procedure.
39. In sum, the Court concludes that there is no case or controversy to be examined in that “Referral” and, consequently, there not being any justification to proceed further, pursuant to Rule 32 (4) of the Rules, it must be dismissed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, on 7 February 2014, unanimously

DECIDES

- I. TO STRIKE OUT the Referral;
- 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. This Decision is effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani