



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

Prishtina, 31 March 2014
Ref.no.: RK588/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI156/13

Applicant

Reshat Sahitaj

**Constitutional Review of the Notification of the Directorate for
Urbanism, Construction, and Environmental Protection – Prishtina.**

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 Mr. Reshat Sahitaj (hereinafter: the “Applicant”), residing in Fushë-Kosovë.

Challenged decision

2. The Applicant challenges the Notification from the Directorate for Urbanism, Construction and Environmental Protection of 12 April 2013, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Notification of the Directorate for Urbanism, Construction and Environmental Protection, alleging that *“everywhere in the civilized world private property is considered to be sacred.”*

Legal basis

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

5. On 4 October 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 28 October 2013, the President of the Court, by Decision No. GJR. KI156/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI156/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović, and Enver Hasani.
7. On 12 November 2013, the Court notified the Applicant of the registration of the Referral and requested that the Applicant submit any court decisions related to the matter, within fifteen (15) days, which the Applicant so far has not yet submitted. On the same day, the Court notified the Directorate for Urbanism, Construction and Environmental Protection – Prishtina, of the Applicant’s referral to the Court.
8. On 21 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

9. At some point in 2003, the Applicant began construction of a house.
10. On 6 March 2013, the Applicant submitted a request to the Municipality of Pristina for a construction permit, no. 05-350-25236. The Applicant claims that

he never received a response from the “*competent urban authorities.*” As a result, the Applicant proceeded to commence the construction of his house.

11. On 12 April 2013, the Applicant was notified by the Municipality of Prishtina that the “*Urban Planning of [his] neighborhood would be finished on 12.05.2013 and that [he] would be notified in detail on the newest urban plan*”, but did not specify that the Applicant should cease construction of the house.
12. On 14 April 2013, the Applicant filed a complaint with the Ministry of Environment and Spatial Planning. However, according to the Applicant, the Applicant has not received a final decision regarding the matter.

Applicant’s allegations

13. The Applicant alleges that his “*right of private property has been violated, every professional regulation has been violated because there is no normal architect that would plan a road like this.*”
14. The Applicant also argues that “*[e]verywhere in the civilized world private property is considered to be sacred. Due to the fact that the Municipality did not respond in time to my request; Due to the fact that the Ministry of Environment and Spatial Planning did never respond to my complaint; Due to the fact that the land in cadastral plot 461/3 is my property. I have started constructing my house pursuant to the plan of my architect pursuant to all the necessary norms and restrictions for the construction of a 4 floor residential house.*”
15. The Applicant therefore seeks “[t]he annulment of the absurd decision to construct the local road that will cause the demolition of several new houses. If there would be no other alternative we would agree with it but the road exists.”

Admissibility of the Referral

16. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
17. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”
18. The Court also refers to Article 47.2 of the Law, which provides:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

19. Finally, the Court refers to Rule 36.1.a of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if:

(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.”

20. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See Case KI65/11, Applicant Holding Corporation “Emin Duraku,” Resolution on Inadmissibility of 21 January 2013).
21. Bearing this in mind, it is clear from the documentation submitted by the Applicant that the Applicant has not utilized all legal remedies afforded to him under the law. The Applicant has not received a final decision from the Directorate for Urbanism, Construction and Environmental Protection – Pristina and has only received a notification letter informing the Applicant the Directorate will inform him of their decision regarding the matter at a later date. Furthermore, the Applicant has not shown that he has pursued his complaint with the regular courts.
22. In this respect, the Court notes that the Applicant’s petition is still pending before the public authorities. Thus, the Applicant’s Referral is premature because there is no final decision to be challenged before this Court. However, the Court notes that the Applicant is not precluded to submit a Referral again to this Court alleging a constitutional violation of his rights after he has exhausted all available legal remedies.
23. It therefore follows that the Applicant has not exhausted all legal remedies available to him under the applicable law as required for him to be able to pursue a claim to the Court.
24. Therefore, the Referral must be deemed inadmissible for non-exhaustion pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) and Rule 56.2 of the Rules of Procedure, on 21 January 2014, unanimously

DECIDES

- I. TO DECLARE 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 effective immediately.

Judge Rapporteur

President of the Constitutional Court

Altay Suroy

Prof. Dr. Enver Hasani