



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

Prishtina, on 28 April 2014
Ref. No.: RK574/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI190/13

Applicant

Ensemble “Shqiponjat e Dukagjinit”, Gjakova

**Request for the constitutional review of the Supporting document of the
Mayor of the Municipality of Gjakova, of 8 November 2011**

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 the Ensemble “Shqiponjat e Dukagjinit” from Gjakova, which is represented by the artistic coordinator, Mr. Muhamet Morina from Gjakova.

Challenged decision

2. The Applicant did not clearly specify what decision it challenges, but in the referral form, in the part specified for the authority of the court that took the decision, it wrote the “Supporting document of the Mayor of the Municipality of Gjakova, Pal Lekaj, of 8 November 2011,” without specifying the date of its receipt.

Subject matter

3. The subject matter is the constitutional review of the Supporting document of the Mayor of the Municipality of Gjakova, Pal Lekaj, addressed to the Directorate for Culture, Youth and Sport (hereinafter referred to as “DCYS”) with a copy to the Applicant, which requested the resolution of the contested matter of providing the location for work for the Ensemble “Shqiponjat e Dukagjinit” from Gjakova.

Legal basis

4. Article 113.7, in conjunction with Article 21.4 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. On 5 November 2013, the Applicant submitted the Referral to the Court.
6. On 2 December 2013, by Decision No. GJR. KI190/13, the President of the Court appointed the Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 11 December 2013, the Constitutional Court formally requested that the Applicant, fill in the standard referral form, according to the instructions in the form. On the same day the Municipality of Gjakova was also notified of the registration of this Referral.
8. On 23 December 2013, the Applicant submitted a partly completed standard referral form to the Court and some additional documents.
9. On 7 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. According to the Applicant, the Ensemble “Shqiponjat e Dukagjinit” is a non-governmental organization (NGO) from Gjakova, which cultivates “the original Albanian folklore” and it carried out its activity within the Palace of Culture “Asim Vokshi” in Gjakova.

11. On 18 April 2011, the Applicant was informed by the DCYS Director to remove their equipment from the work space, because the premises would be renovated. It seems that this suggestion was made verbally, because there is no attached written decision to the Referral.
12. According to the Applicant, the members of the Ensemble were no longer allowed to carry out their activity in the facility; furthermore, they were continuously prevented by the DCYS in performing their cultural activity.
13. On 20 May 2011 and on 8 November 2011, the Applicant requested the Mayor of the Municipality, Pal Lekaj, *"to provide institutional assistance for conducting the activity of the Ensemble "Shqiponjat e Dukagjinit."*
14. On 19 October 2012, the Applicant addressed the Ombudsperson with a request against the Municipality of Gjakova - DCYS *"due to non-providing the necessary space for conducting their cultural activities."*
15. On 28 August 2012, the Ombudsperson denied the Applicant's request , with the justification that after the investigating this case, the Ombudsperson was notified by the respective authorities of the Municipality of Gjakova that the Applicant's request had already been fulfilled .
16. On 5 November 2013 the Applicant submitted the Referral to the Constitutional Court, and requested that the Constitutional Court award the Applicant "moral and material compensation" because of their removal from the working environment, where they used to carry out their cultural activity.

Applicant's allegations

17. The Applicant alleges that the DCYS decision of the Municipality of Gjakova violated Articles 23, 26, 27, 48, 50 and 55 of the Constitution of Kosovo.
18. The Applicant requested that, *"the Constitutional Court of Kosovo as the highest constitutional arbiter for protection of human rights and freedoms brings justice in the country and... moral and material compensation if we are entitled to"*.

Admissibility of the Referral

19. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether the party has fulfilled the admissibility requirements of the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.
20. 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".

21. In this respect, the Court concludes that the Applicant has not provided any evidence that it has exhausted all of its legal remedies, before addressing the Constitutional Court with this Referral.
22. Taking into account the Law on State Administration of the Republic of Kosovo (Law 03/L189), Article 2.1.4, where the local state administrative bodies are defined as "local state administration bodies", while in Article 4.1.6 of the same law, it is provided that the administrative duties are performed by administration bodies in "administrative procedure", it is quite clear that the Applicant has available remedies for complaints provided by the Law on Administrative Procedure.
23. The mere fact that the Applicant submitted a complaint to the Office of the Ombudsperson cannot be a basis to conclude that the Applicant has exhausted all effective legal remedies in this case. Similarly, the Court recalls that the European Court of Human Rights (ECtHR), as a general rule holds that a mere submission to the Ombudsperson alone cannot be interpreted as the exhaustion of all effective legal remedies as required by Article 35 of the European Convention on Human Rights (see *Leander v. Sweden*, Judgment of 26 March 1987, *Marc Montion v. France*, Decision of 14 May 1987, etc.). Therefore, by taking into account Article 53 of the Constitution regarding the manner of interpreting human rights guaranteed by the Constitution, the Court finds that there is no reason to take a different approach on this case.
24. One of primary purposes of the exhaustion of legal remedies is to afford to domestic courts or administrative bodies the effective decision making competencies, to initially have a possibility to decide on the issues of possible violations of human rights and the compliance of the domestic law with the Constitution (see ECtHR Decision, *A, B and C v. Ireland* [GM], § 142).
25. The Court wishes to emphasize that the establishment, registration, internal management, activity, and other competences of the NGOs are regulated by Law on Freedom of association in non-governmental organizations Law No.04/L-057 approved by Assembly of Kosovo, on 29.08.2011,
26. Considering the fact that the Applicant did not meet the basic formal admissibility requirement for exhaustion of all legal remedies, the Court, pursuant to Rule 36 (1) a), finds that the Referral is not suitable for further consideration at this time, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 47 of the Law on Court and Rule 36 and Rule 56 (2) of the Rules of Procedure, on 14 March 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. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani