



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

Prishtina, 8 May 2014
Ref.no.:RK 579/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI191/13

Applicant

Fejzullah Fejzullahu

**Constitutional review of the Decision of the Court of Appeals of Kosovo,
PN. No. 624/2012, of 11 October 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 Applicant is Mr. Fejzullah Fejzullahu (hereinafter: the Applicant), residing in Fushë-Kosovë.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo PN. No. 624/2012, of 11 October 2013, which was served on the Applicant on an unspecified date.

Subject matter

3. The Applicant requests the constitutional review of the Decision of the Court of Appeal of Kosovo PN. no. 624/2012, of 11 October 2013 and Decision of the Basic Court in Prishtina, no. 316/13, of 26.07.2013, as the decisions, which are not based on facts. The Applicant does not specify the Articles of the Constitution, which are violated, but alleges that by challenged decision his human and material rights were violated.

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 on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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 6 November 2013, the Applicant submitted his Referral to the Court.
6. On 2 December 2013, the President by Decision No. GJR. KI191/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI191/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 23 January 2014, the Court notified the Applicant and the Court of Appeal of Kosovo on the registration of the Referral under no. KI191/13.
8. On 25 March 2014, after having considered the report of the Judge Rapporteur, the Review Panel and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

9. On 3 February 2009, the Municipal Public Prosecutor's Office in Prishtina (hereinafter: MPPO) by indictment proposal (PP. no. 364-5/2009), accused the Applicant that from an unspecified date until 17 October 2008, he stole electrical energy in the premise, which is in his ownership and by this he has damaged the Kosovo Energy Corporation.
10. On 11 May 2010, the Municipal Court in Prishtina deciding upon the proposal indictment of MPPO rendered the Judgment (P. no. 233/09), by which the Applicant is found guilty of committing criminal offence of theft and he was

punished by a fine. In the reasoning of its Judgment, the Municipal Court stated:

“While assessing the material evidence, enclosed to the case file specifically: minutes no.199758 of 17.10.2008, photo documents and bill no.DPR08HP071171 of 18.12.2008, as well as other evidence in the case file, the Court finds that this evidence is convincing, grounded on law and at the same time prove that the accused has committed criminal offense he is accused of and found the same guilty and punished him as in the enacting clause of this Judgment.”

11. On 16 June 2010, the Municipal Court in Prishtina, after the Judgment P. no. 233/09 of 11 May 2010 became final, rendered Decision E. no. 1140/2010, thereby allowing the execution against the Applicant, by which the Applicant is obliged that within the time limit of 7 days upon the receipt of the decision, pays the fine, which, if not paid, will be converted to imprisonment sentence. The Applicant had a right of appeal within the time limit of 7 days, from the date the decision was served on him.
12. On 10 November 2010, the Applicant filed an Objection against the Decision E. no. 1140/2010 of 16 June 2010, by challenging it in entirety.
13. On 19 February 2013, the Applicant due to unpaid obligations from the Ruling on execution of the Municipal Court was forcibly taken to serve the imprisonment sentence, from the Decision of the Municipal Court in Prishtina, E. no. 1140/2010 of 11 May 2010.
14. On 30 July 2013, by Decision KP. no. 316/13, the Basic Court in Prishtina, deciding upon the Applicant's request, rejected as ungrounded the Applicant's request to repeat the criminal proceedings, completed by the Judgment P. no. 233/09 of the Municipal Court in Prishtina.
15. In the reasoning of the Decision of the Basic Court KP. No. 316/13, is stated:

“Considering facts and evidence on which the first instance grounded its decision pursuant to the finding of the criminal panel, the allegations of the convict do not present new evidence pursuant to Article 423 of the CPCK. The statements that this Decision is absurd, biased and that the Judge forced him to pay the fine as well as the enclosed evidence –the article in newspaper ‘Bota Sot’ and several bills from 2005 and 2006 on his name and a report ‘Customer Transactions’ for the period starting from 01.01.2005 until 31.12.2010 on that same premise –the same address but not in his name, do not have impact on repetition of the criminal procedure.”

16. On 11 October 2013, by the Ruling PN. No. 624/2013, the Court of Appeal of Kosovo, deciding upon the Applicant's appeal, rejected as ungrounded the Applicant's appeal against the Ruling of the Basic Court in Prishtina KP. No. 316/13. In the reasoning of the Court of Appeal is stated:

“Since, apart from the request for repetition of the criminal proceedings and the appeal filed against the Ruling to reject the request, the convict did not provide any new evidence that on its own or with the previous evidence might determine the innocence of the convict in relation to the committed criminal offense. This court’s panel, based on this factual situation, and the Proposal of the Appeal’s Prosecution, found that the first instance court has correctly applied the provisions of the CPCK when rejecting the request of the convict, since there are no legal grounds for repeating the criminal procedure, which stance is approved by this court too. These were the reasons why the appeal of the convict Fejzullah Fejzullahu was rejected as ungrounded.”

Applicant’s allegations

17. The Applicant alleges that the court authorities, namely the Municipal Court in Prishtina, rendered an arbitrary decision, by finding him guilty of the criminal offence of theft of the electrical energy, by not considering the factual situation and the evidence.

18. The Applicant seeks:

“I seek the annulment of the Ruling of Basic Court in Prishtina no. 316/13 of 26.07.2013 as not grounded on facts! How can I be punished after several years, 7 years exactly without taking into account the evidence that the purchase/sale was done in 2006 with all the fulfilled obligations by me (the contract certified in the court).”

19. The Applicant proposes to the Court and requests:

“Pursuant to the factual legal situation and presented and substantiated evidence, and on the grounds of the erroneous claim filed against me because the claim should have been filed against the purchaser and not against me, on the grounds of physical, human and material mistreatment I propose and seek from the Court to:

- Seriously analyze the entire material I am enclosing,*
- Annul the previous Rulings;*
- Acquit me of the criminal charge;*
- Compensate the paid fine, all court expenses, and expenses for attorneys and other material-moral expenses.”*

Admissibility of the Referral

20. In this case, the Court refers to Article 113 [Jurisdiction and Authorized Parties] which provides:

1. “The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. 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. 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.”

22. Furthermore, Rule 36 (1) a), b) and c) of the Rules of Procedure provides that:

“(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, or

b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

c) the Referral is not manifestly ill-founded.”

23. The Court considers that the Applicant has met the prescribed period of four months from the day when the decision of the Court of Appeal has been served on him. In this case, the final decision on the Applicant's case is the Decision of the Court of Appeal PN. No. 624/2013 of 11 October 2013. As a result, the Applicant has shown that he has exhausted all available legal remedies in accordance with applicable laws. He specifically challenges the Decision of the Municipal Court in Prishtina and the Decision of the Court of Appeal, as acts of public authorities; he has clearly stated the relief sought; and he has submitted various decisions and other supporting information and documents.

24. The Constitutional Court further notes that the Applicant did not present any allegation before the Basic Court and the Court of Appeal, on the constitutional ground, either implicitly or in substance, by which he would refer the alleged violation of his constitutionally guaranteed human rights and fundamental freedoms. The Court also notes that the Applicant in his Referral submitted to the Court, alleges and attached the sale-purchase agreement, which he did not attach to the evidence and documents before the regular courts in Kosovo. The reasoning of the Decision PN. no. 624/2013 of the Court of Appeals, reads:

“The convict did not present facts or evidence in relation to this, such as the sale/purchase agreement which pursuant to Article 423, paragraph 1, item 1.3 of the Criminal Procedure Code of Kosovo would have been assessed as new evidence and would present the legal ground pursuant to Article 423 of the PCPCK to allow the repetition of the criminal proceedings and that evidence could have put into question the factual situation determined by the punitive order Judgment that found the convict guilty of the criminal offense of Theft pursuant to Article 252, paragraph 2 of the PCCK.”

25. In practice, nothing has prevented the Applicant to appeal before the Basic Court and the Court of Appeal against the alleged violation of human rights and to submit the sale-purchase agreement, which would be taken into account as new evidence. If these courts had taken into account violation and new evidence and if the same had fixed it, all would have ended there; if the courts had not corrected the violation or if they had not considered new evidence, the Applicant would have met the requirement for the exhaustion of all legal remedies in the sense that these courts had been given an opportunity to correct the alleged violation.
26. In any case, the Constitutional Court finds that the facts of the case do not allow convincing conclusion that the grounds of appeal of the "*erroneous application of legal provisions, erroneous and incomplete determination of factual situation*" presented before the Court of Appeal meet the test of the European Court. Under these circumstances, it is therefore not necessary to further consider the matter.
27. In addition, the Court considers that the Applicant has not shown and substantiated by evidence the alleged violation of his rights by the Basic Court and the Court of Appeal.
28. In fact, the Applicant's allegations for violation of the constitutional rights do not present *prima facie* sufficient ground to refer the case to the Court; the Applicant's dissatisfaction with the decision of the regular courts does not constitute constitutional ground to complain in the Constitutional Court.
29. Moreover, the Court notes that, in order that the *prima facie* case meets the admissibility requirements of the Referral, the Applicant must show that the proceedings before the District Court and the Supreme Court, viewed in their entirety, were not conducted in such a manner that the Applicant would have had a fair trial or that other violations of the constitutional rights could have been committed by the regular courts during the trial.
30. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure, providing that: "*The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.*"
31. 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 courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
32. Thus, the Court is not to act as a court of fourth instance, in the present case, 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 of Human Rights [ECHR] 1999-1).
33. The Constitutional Court cannot consider that the relevant proceedings before the Basic Court and the Court of Appeal were in any way unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, ECtHR Decision as to the

Admissibility of Application no. 17064/06 of 30 June 2009).

34. In sum, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

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 Procedure, in the session held on 25 March 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. To notify this decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Altay Suroy



Prof. Dr. Enver Hasani