



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

Pristina, on 5 May 2014
Ref.no.:RK 576/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI221/13

Applicant

Shaqir Përvetica

**Request for reconsideration of the Resolution on Inadmissibility of the
Constitutional Court of the Republic of Kosovo,
Case no. KI67/13, of 12 September 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, gjyqtar, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shaqir Prevetica, residing in Prishtina.

Challenged decision

2. In the present Referral, the Applicant has not specified what decision he wishes to challenge. In general, the Applicant has addressed several court authorities, respectively the presidents of these authorities, including the Constitutional Court.

Subject matter

3. The subject matter of the Referral is the request for reconsideration of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo in Case no. KI67/13, of 12 September 2013, that concerned the constitutional review of the Decision of the Supreme Court Rev. no. 228/2012 of 12 March 2013.
4. In the present Referral, the Applicant did not specify any specific violation of the constitutional provisions.

Legal basis

5. Rule 36 (3) e) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 9 December 2013, the Applicant submitted the Referral to the Court.
7. On 27 December 2013, the President of the Court, by Decision no. GJR. 221/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President of the Court, by Decision no. KSH. 221/13, appointed members of the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr. Enver Hasani.
8. On 27 January 2014, the Court notified the Applicant and requested from him to supplement his Referral with relevant documents.
9. Pursuant to Article 22.4 of the Law on the Constitutional Court, the Applicant has 15 days time from the day of confirmation of the receipt of the letter to submit additional relevant documents to his Referral, as requested from the Court, but this procedure was not respected, even after the expiration of the time limit provided by law.
10. On 14 March 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 the facts

11. The present Applicant's Referral, regarding the reconsideration of the Resolution on Inadmissibility in Case KI67/13, of 12 September 2013,

enumerates the following facts: the decisions of the Municipal Court, C1. No. 46/2002, of 10 September 2002 and C1. no. 05/2008, of 1 April 2009, as well as the decisions of the District Court in Prishtina, Ac. no. 592/2002, of 1 February 2005, and Ac. no. 56/2006, of 21 November 2007.

12. The Court notes that, in its previous decision, Case KI67/13, appear the same facts, which the Court has reviewed in the session of the Review Panel of 12 September 2013. The decisions of the regular courts that were reviewed in the previous case are as follows:

“On 10 September 2002, the Municipal Court in Prishtina had rendered the Ruling C. no. 46/02, by which rejected the claim of the Applicant as out of time. This court had concluded that the claim was filed out of legal time limit.

On 1 February 2005, the District Court in Prishtina, by Decision Ac. no. 592/2002 quashed the Ruling C. no. 46/02 of 10 September 2002 of the Municipal Court in Prishtina and returned the matter to the same court for retrial.

On 6 June 2005, the Municipal Court in Prishtina, by Ruling, C. no. 130/05, rejected the Applicant’s claim as out of time, because the Applicant missed the legal time limit for filing the claim.

On 21 November 2007, the District Court in Prishtina rendered Decision Ac. no. 56/2006, by which quashed the Ruling C. no. 130/05, of 6 June 2005, of the Municipal Court in Prishtina and decided to return the matter for retrial to the first instance court.

On 1 April 2009, the Municipal Court in Prishtina (Ruling, Cl. no. 05/2008) terminated the procedure of the further adjudication of the contested matter, “because TCC “Kosova” former “Sloga” in Prishtina was privatized and that the liquidation of the abovementioned company entered into force on 11 April 2007. The abovementioned court bases its reasoning on the submission of 4 June 2007 of Kosovo Trust Agency, which had proposed to the Municipal Court in Prishtina, to terminate the court proceedings against the sued company, since the latter was privatized and that the liquidation process has entered into force since 11 April 2007.

On 20 July 2009, the District Court in Prishtina (Ruling, Ac. no. 1178/2009), finally rejected as ungrounded the Applicant’s appeal and upheld the Ruling of the Municipal Court in Prishtina Cl.no.05/08 of 27 July 2009, by which the claimant’s claim was rejected as out of time. The District Court Panel, after reviewing the case, concluded that the first instance served the Ruling Cl.no.05/08 of 1 April 2009 on the Applicant on 2 April 2009, while the representative of the Applicant filed the appeal on 30 June 2009, which according to the assessment of the panel of that court, the appeal was filed after the statutory deadline.

On 12 March 2013, the Supreme Court (Ruling, Rev. no. 228/2012) rejected as ungrounded the Applicant’s revision, filed against the Ruling of the

District Court Ac.no. 1178/2009 of 20 July 2009. The Supreme Court justifies its decision as following: "Setting from the situation of this matter, the Supreme Court of Kosovo found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time."

Applicant's allegations

13. The Applicant mainly complains on the work inefficiencies of the judicial system in particular and justice system in general, alleging non-professionalism in the decision-making of the judiciary.
14. Applicant has not clarified what he wants to achieve with the present Referral and does not explain the purpose of filing this Referral. He only expresses his dissatisfaction with some of the decisions of the regular courts, whereby he underlined the statements of the courts, qualifying them as being untrue findings. The Applicant also complains against the Resolution on Inadmissibility in the Case no. KI67/13, of 12 September 2013, of the Constitutional Court.

Admissibility of the Referral

15. Before adjudicating the Referral, the Court assesses whether the Applicant's Referral has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and Rules of Procedure.
16. The Applicant in the present Referral complains against the decisions of the court authorities in general, including the Resolution on Inadmissibility in Case no. KI67/13, of 12 September 2013, of the Constitutional Court.
17. In the said case, on 12 September 2013, the Constitutional Court had unanimously decided that the Referral was inadmissible for the following reasons:

The Court notes that the Applicant only complains about the decisions of regular courts, regarding the conclusion that the appeal was not filed within the legal time limit, as it was required by the provisions of the applicable law.

The Court recalls that it is not its task to assess the legality of decisions issued by regular courts, unless such decisions have been rendered in an arbitrary and unreasoned manner.

It is the task of the Court to assess if the proceedings, in their entirety, have been in compliance with the Constitution. So, the Constitutional Court is not a fourth instance in respect to the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

In the present case, the Applicant has not provided any prima facie evidence which would show that the alleged violation mentioned in the Referral constitute a violation of his constitutional right (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005)

Therefore, the Court cannot consider that the pertinent proceedings conducted in the Supreme Court were in any way unfair or arbitrary (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

Finally, the Court concludes that the Applicant's Referral does not meet all the admissibility requirements and thus, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rule 36 (2) a) and b) of the Rules of Procedure, the Referral is manifestly ill-founded and inadmissible."

18. In the concrete case, it can be clearly noted that the present Referral of the Applicant does not present any new evidence or new allegation of a violation of his fundamental rights as guaranteed by the Constitution.
19. The Court cannot consider this Referral filed by the Applicant as a new Referral because regarding the arguments raised in the present Referral, the Court has already decided by Resolution on Inadmissibility in case No. KI67/13 of 12 September 2013.
20. In this respect, the Rule 36 (3) item f) of the Rules of Procedure, clearly provides that:

"36 (3) A Referral may also be deemed inadmissible in any of the following cases:

(f) the Referral is incompatible ratione materiae with the Constitution;"
21. In this context, the present Referral does not meet the requirements of the abovementioned Rule as the Court does not have jurisdiction to decide on legal matters it has already decided on.
22. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on matters it has already decided.
23. The Constitutional Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

24. In this regard, Article 116.1 [Legal Effect of Decisions] of the Constitution provides: “*Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*”
25. The parties may request from the Court to rectify clerical or numerical errors, if such errors were made in its decisions.
26. In this respect, Rule 61 of the Rules of Procedure provides:
- “(1) The Court may, ex officio, or upon application of a party made within two weeks of the service of a Judgment or decision, rectify any clerical and calculation errors in the judgment or decision.*
- “(2) A rectification order shall be attached to the original of the rectified Judgment or decision.”*
27. In conclusion, the Court finds that the Applicant’s Referral is not compatible *ratione materiae* with the Constitution, therefore in accordance with Rule 36 (3) f) it must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3) f) and Rule 56 (2) of the Rules of Procedure, on 14 March 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. This decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani