



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

Prishtina, 26 May 2014
Ref.no.: RK633/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI231/13

Applicant

Alisait Qerimi

**Constitutional review of the Decision of the Court of Appeal in Prishtina,
Ac. no. 4375/2012, of 4 July 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 Referral was filed by Mr. Alisait Qerimi, residing in Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant requests constitutional review of the Decision of the Court of Appeal in Prishtina, Ac. no. 4375/2012, of 4 July 2013, served upon the Applicant on 29 August 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Decision of the Court of Appeal in Prishtina, which is alleged to have violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of 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 27 December 2013, the Applicant filed Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 January 2014, the President of the Court, by Decision No. GJR. KI 231/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI231/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 29 January 2014, the Court notified and submitted a copy of the Referral to the Court of Appeal, the State Prosecutor, and the third party F. Q.
8. On 30 January 2014, the Court requested from the Applicant to provide information whether he received a decision upon his appeal of 20 November 2013, related to the executive procedure.
9. On 5 February 2014, the Applicant informed the Court that he has not yet received the decision upon his appeal of 20 November 2013, related to executive procedure.
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 facts

11. On 23 October 2012, the Municipal Court in Gjilan, by Decision C. no. 354/09, approved the statement of claim of the claimant F. Q., filed against the Applicant and confirmed that the Applicant had obstructed the claimant F. Q. in using the basement in his individual residential house. The Municipal Court ordered the Applicant to not obstruct the claimant F. Q. in using his basement. The Applicant filed appeal with the Court of Appeal in Prishtina against this Decision.
12. On 4 July 2013, the Court of Appeal, by Decision Ac. no. 4375/2012, rejected the appeal of the Applicant, and upheld the Decision of the Municipal Court in Gjilan, of 23 October 2012. The Court concluded that *“In these contests the court provides judicial protection pursuant to the final factual situation of possession without entering into the right of possession or ownership for which the litigating parties have other contests, setting from the fact that with the administered evidence the first instance court has confirmed the fact that the claimant had the final factual use of the contested basement, thus it correctly approved its statement of claim as grounded.”*
13. On 11 August 2013, the Applicant filed a proposal for repetition of the contested procedure before the Basic Court in Gjilan, since:
 - a. The Applicant could not attend the hearing before the Municipal Court in Gjilan, due to objective reasons;
 - b. That the statement of a witness was changed in the Municipal Court in Gjilan; and
 - c. Other witnesses should be heard.
14. On 16 September 2013, the claimant F.Q. filed with the Basic Court in Gjilan a proposal for execution of the Decision of the Municipal Court in Gjilan, C. no. 354/2009, of 23 October 2012.
15. On 16 September 2013, the Basic Court in Gjilan, by Decision E. no. 1118/13, assigned the execution of the Decision of the Basic Court in Gjilan, C. no. 354/2009, of 23 October 2012.
16. On 7 October 2013, the Applicant filed an objection against the Decision E. no. 1118/13, of 16 September 2013.
17. On 15 November 2013, the Basic Court in Gjilan, by Decision CP. no. 1118/2013, rejected as ungrounded the objection of the Applicant.
18. On 20 November 2013, the Applicant filed an appeal against the Decision of the Basic Court, CP. no. 1118/2013, of 15 November 2013, for adjournment of the execution. The Applicant did not file any evidence whether he received a decision upon this submission.
19. On 5 December 2013, the State Prosecutor notified the Applicant that there were no legal grounds for filing a request for protection of legality, as per his request.

Applicant's allegations

20. The Applicant alleges that by Decision of the Municipal Court in Gjilan, C. no. 6 354/09, of 23 October 2012, Decision of the Court of Appeal in Prishtina, Ac. no. 4375/2012, of 4 July 2013, proposal for execution, CP. no. 1118/13, of 16 September 2013, Decision Cp. no. 1118/2013, of 15 November 2013, violated his rights as per Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. In this respect, the Court refers to Article 48 of the Law, which provides that:

"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."

23. Furthermore, the Court takes into account Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure, which provide:

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

[...]

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

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie justified;

[...]

d) when the Applicant does not sufficiently substantiate his claim."

24. The Court notes that the Applicant's Referral alleges violation of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.

25. Nevertheless, the Court also notes that the Applicant has failed to clarify how and why these constitutional rights were violated by the challenged decision. The dissatisfaction with the decision or a mere mentioning of articles and provisions of the Constitution are not sufficient to raise an allegation of a constitutional violation. When alleging constitutional violations, the Applicant

must provide convincing and well-reasoned argument in order that the Referral is grounded.

26. The Court notes that it is not the task of this Court to deal with errors of fact or law (legality) allegedly committed by regular courts, unless and in so far they have infringed the rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not act as a court of fourth instance in this case. It is the role of regular courts to interpret and apply pertinent rules of both procedural and material law (see case KI14/13, the Applicant, *Municipality of Podujeva*, and the Resolution on Inadmissibility of 12 March 2013).
27. Furthermore, the decision of the Court of Appeal has provided reasoning on the facts of the case and their findings.
28. Consequently, the Court considers that the Applicant's Referral does not meet the admissibility requirements, due to the fact that the Applicant has not been able to justify his allegations and provide evidence to substantiate the allegations for the constitutional violation by challenged decision.
29. Therefore, in compliance with Article 48 of the Law, and Rule 36 (1) c) and (2) a) and d) of the Rules of Procedure, the Referral must be rejected as manifestly ill-founded.

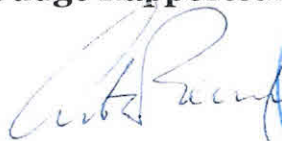
FOR THESE REASONS

Pursuant to Article 48 of the Law, and Rule 36 (1) c) and 36 (2) a) as well as Rule 56 (2) of the Rules of Procedure, the Constitutional Court, on 14 March 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the parties;
- 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


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani