



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

Prishtina, 23 May 2014
Ref.no.:RK 629/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI232/13

Applicant

Fatos Kakeli

**Constitutional review of the Judgment of the Supreme Court, Rev. Mlc.
no. 197/2011, dated 14 May 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 submitted by Mr. Fatos Kakeli (hereinafter: the “Applicant”), residing in Prizren, represented by Mr. Nexhat Helshani, a practicing lawyer from Prizren.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. Mlc. no. 197/2011, of 14 May 2013, which was served on the Applicant on 31 May 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court by which the Applicant alleges that Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.
4. Furthermore, the Applicant requests the Court not to disclose his identity because the "*Interference of many persons, who have impacted on decisions.*"

Legal basis

5. The Referral is based on Article 113.7 of 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 (2) 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 27 December 2013, the Applicant submitted the Referral to the Constitutional Court for the Republic of Kosovo (hereinafter: the "Court").
7. On 15 January 2014, the President of the Court, by Decision No. GJR. KI232/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI232/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 27 January 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. 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

10. On 29 May 2003, the Municipal Court in Prizren (Judgment C. no. 425/01) rejected as ungrounded the complaint of the Applicant to have a sale-purchase contract of immovable property annulled. The Applicant filed a complaint against this Judgment with the District Court Prizren.

11. On 1 June 2005, the District Court of Prizren (Decision Ac. no. 409/2003) approved the complaint of the Applicant, annulled the Judgment of the Municipal Court in Prizren and sent it back for retrial.
12. On 6 June 2007, the Municipal Court in Prizren (Judgment C. no. 505/05) rejected as ungrounded the Applicant's complaint.
13. On 14 May 2013, the Supreme Court (Judgment Rev. Mlc. no. 197/2011) rejected as ungrounded the request for protection of legality against the Judgment of the District Court in Prizren, Ac. no. 333/2009, of 13 April 2011 and Judgment of the Municipal Court in Prizren, C. no. 762/2008, of 7 May 2009.
14. Furthermore, no supporting documentation and information was provided on the reasons for the Applicant not to have his identity disclosed.

Applicant's allegations

15. The Applicant alleges that the *"principle of protection of right to property has been violated by the court instances."* and that *"The basic principle that has to do with fair and impartial trial has been violated, since the decision was rendered as a result of criminal offence..."*.

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 49 of the Law, which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...]"
18. The Court also refers to Rule 36 (1) b) of the Rules of Procedure, which provides:

"(1) The Court may only deal with Referrals if: 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 [...]"
19. The final judgment of the Supreme Court, Rev. Mlc. no. 197/2011 was taken on 14 May 2013, and was served on the Applicant on 31 May 2013, whereas the Applicant filed the Referral with the Court on 27 December 2013, i.e. more than 4 months from the day upon which the Applicant has been served with the Supreme Court decision.
20. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

21. As to the Applicant's request for not having his identity disclosed, the Court rejects it as ungrounded, because no supporting documentation was provided to support the reasons for the Applicant not to have his identity disclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 14 March 2014, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the Applicant's request not to have his identity disclosed;
- III. TO NOTIFY the Parties of this Decision;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani