



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

Prishtina, 26 June 2014
Ref.no.:RK668/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI26/12

Applicant

Bujar Ahmetaj

**Constitutional Review of Decision no. 557/2009 of the Municipal Court
in Prishtina of 9 February 2012.**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Bujar Ahmetaj, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment, P. no. 557/2009, of the Municipal Court in Prishtina of 9 February 2012, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly “*is based on a wrongful factual situation*”. The applicant also claims that he was not invited at the hearing.

Legal basis

4. 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 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

5. The Applicant submitted the referral on 15 March 2012.
6. On 25 April 2012, the President of the Constitutional Court, with Decision No. GJR. KI26/12, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI26/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani.
7. On 1 March 2013, the Municipal Court was notified of the referral.
8. On 8 May 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of facts

9. On 3 August 2008, Kosovo Energy Cooperation – KEK underwent a meter replacement, whereby it confirmed (confirmation letter 31690 no. 003/43) that the Applicant had “*intervened with his electric meter and thus has misused the electricity*”.
10. On 17 March 2009, the Public Prosecutor in Prishtina filed an indictment (PP. 865-11/2009) against the Applicant for the criminal act Theft from Article 252, paragraph 1 of the Criminal Code of Kosovo.
11. On 30 December 2010, the Public Prosecutor submitted a request for a punitive order (PP865-11/2009).
12. On 11 January 2011, the Municipal Court in Prishtina (Judgement P. 557/2009) declared admissible the request of the Municipal Public Prosecutor in Prishtina

and found guilty the Applicant of Article 252 paragraph 1 of the Criminal Code of Kosovo. Based on the request of the Public Prosecutor the Municipal Court in Prishtina issued a Punitive Order in the amount of 200 Euros.

13. The Municipal Court held that *“pursuant to Article 476 of the Provisional Criminal Procedure Code, it is foreseen that for criminal offence punishable by a fine or imprisonment of up to three (3) years with the request of the Municipal Public Prosecutor the court issued this fine without holding a hearing”*.
14. The applicant submitted an appeal against the above mentioned decision of the Municipal Court. The Court is not notified of the content of the appeal as it was not submitted by the Applicant.
15. On 23 February 2011, the Municipal Court in Prishtina (Decision P.no 557/2008) rejected as out of time the appeal of the applicant submitted against the Judgment for issuing a punitive order on 11 January 2011.
16. On 9 March 2011, the Municipal Court in Prishtina (Decision KP no. 56/2011) rejected as ungrounded the appeal submitted by the Applicant against the Judgment of the Municipal Court dated 11 January 2011. An appeal was not permitted against this Decision. Nevertheless the Applicant submitted an appeal against the abovementioned decision.
17. On 9 February 2012, the Municipal Court in Prishtina (Decision P. no. 557/2009) *“pursuant to Article 22 paragraph 3 and Article 445 paragraph 1 of the Criminal Procedure Code of Kosovo rejected the appeal submitted by the Applicant because an appeal is not allowed against the decision of the Municipal Court dated 11 January 2011”*.

Applicants' allegations

18. The applicant requests from the Court the following:
 - *Repeat the judicial proceedings and ascertain the factual situation.*
 - *Give the opportunity to attend the court sessions and take into account the presented evidences what would result to reject of the indictment of Prosecutor and KEK.*
 - *Apply the legal provisions of Criminal Code of Kosovo and Criminal Procedure Code of Kosovo.*
 - *Reject the request of KEK as ungrounded, pursuant to Article 37 of Criminal Code of Kosovo.*
 - *Reject the judgment which is contrary to the provisions of Criminal Procedure Code of Kosovo, Article 103, par.2, Article 127 point 3, Article 182 par.i, Article 183, Article 197 par.c.*
19. In addition the applicant requests from the Court *“that the decisions of lower instance courts is changed due to lack of evidence and find him not guilty”*.

Analyses of the Criminal Procedure Code in other countries

20. While deciding on Applicant's referral, in relation to the Applicant's allegation that he was not present at the hearing, the court as a comparison could take notice of the Criminal Procedure Codes in other countries in the region, such as Bosnia and Herzegovina, Croatia and Montenegro.

Croatia

Article 465

"For offences in the jurisdiction of a single judge which come to the State Attorney's Knowledge on the basis of a credible crime report, the State Attorney may request in a motion to indict that the court issue a criminal order imposing by it a certain punishment or measure on the defendant without holding a trial".

Bosnia

Article 334

"For criminal offenses for which the law prescribes a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect has committed the criminal offense, the Prosecutor may request, in the indictment, from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing".

Montenegro

Article 457

"For criminal offences punishable by a fine or the sentence of imprisonment for a maximum term not exceeding one year as a principal punishment, upon a motion of the State Prosecutor, and with the consent of the defendant, the judge may issue a warrant pronouncing sentence without holding a trial".

Assessment of the admissibility

21. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
22. 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".

23. In addition Article 47 (2) of the Law on Court also establishes that:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

24. Moreover, Rule 36 (1) a) of the Rules provides that:

“The Court may only deal with Referrals if: all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.”

25. The Court notes that the Applicant did not file the appeal with the Municipal Court in Pristine within the legal deadline.

26. The principle of subsidiary requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Thus, the Applicant actually failing to take some procedural step in the regular courts in accordance with the established deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.

27. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies in due time (see *Whiteside v the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).

28. It follows that the Referral is inadmissible because of non exhaustion of all legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 8 May 2014, unanimously

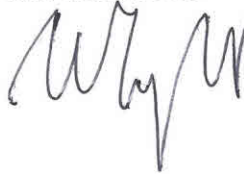
DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published 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

Ivan Čukalović



Prof. Dr. Enver Hasani

