



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

Prishtina, 05 July 2013
Ref.no.:VTK 466/13

DECISION TO STRIKE OUT THE REFERRAL

in

Cases KI 58, 66 and 94/12

Selatin Gashi, Halit Azemi and group of Municipal Assembly Members of Viti

Referral for constitutional review of the Decision of the Municipality of Mitrovica, Gjilan and Viti for conditioning the access of citizens to public services with payment of obligations towards publicly owned enterprises

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

Applicants

1. The Applicants are Selatin Gashi from village Busi of the Municipality of Mitrovica, Halit Azemi resident in the square ‘Sheshi i Pavarësisë’ of Gjilan and group of the Municipal Assembly members of Viti.

Challenged decisions

2. The challenged decisions of the public authorities are:
 - 1) Decisions of the Municipal Assembly of Mitrovica No.02/06-22557/8 of 26.04.2012 and Decision No.02/06-3401/5 of 07.07.2011 on conditioning the access of citizens and businesses, with office in MA –Mitrovica, to the municipal services with proof of payment of the obligations towards Regional Water Supply Company ”Mitrovica” and Regional Waste Company ”Uniteti.”
 - 2) Decision of MA -Gjilan 01 No.16/10608 of 24.06.2011 on Restriction of Municipal Services with Payment of Bills for Waste and Water, which is dedicated to all legal and natural persons of the Municipality of Gjilan, and
 - 3) Decision 01/013/1355 of 29.07.2011 of MA-Viti on Conditioning of Provision of Certain Municipal Services with Payment of Bills for Waste and Water, which applies to all natural and legal persons of the Municipality of Viti.

Subject matter

3. The subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 15.06.2012 (KI 58/12), on 09.07.2012 (KI 66/12) and on 24.12.2012 KI 94/12) is the constitutional review of the Decisions of the Municipal Assemblies of Mitrovica, Gjilan and Viti by which are conditioned legal and natural persons of these municipalities that they cannot enjoy certain municipal services by respective municipal administration, mentioned in the decisions, if they do not present beforehand the proof on the paid bills for fulfillment of obligations towards Publicly Owned Enterprises, mentioned in the decisions: KRU ”Mitrovica” and KRM ”Uniteti”, in MA-Mitrovica, towards competent publicly owned enterprises for Water and Waste in MA –Gjilan (without mentioning the names in the decisions) and KRM ”Higjena” JSC-Gjilan and KRU ‘Hidromorava’ JSC-Gjilan (MA-Viti).

Alleged violations of guaranteed constitutional rights

4. Applicants alleged that by the decisions of the Municipal Assemblies, mentioned in the second paragraph of this decision, were violated their human rights as follows:
 - a) Article 21.1, Article 24(1) and 124 (6) of the Constitution (Mr. Selatin Gashi, Referral KI 58/12).
 - b) Mr. Halit Azemi (Referral KI 66/12) did not specify any constitutional provision but he stated that his human rights in obtaining personal documents were violated. and
 - c) the Municipal Assembly Members of Viti attached the challenged decision by requesting its constitutional review, without specifying further details.

Legal basis

5. Article 113.7 in conjunction with Article 21.4 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, and Rules 53 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Constitutional Court in chronological order by cases

Case KI 58/12

6. On 1 June 2012, the Court received through mail the Referral from Mr. Selatin Gashi, by which he requested from the Court to: "assess the constitutionality of a memorandum concluded on 24 April 2012 between MA of Mitrovica on one side and of the Regional Water Supply Company and the Waste Management Company "Uniteti" on the other side."
7. On 4 June 2012, the Court notified the first Applicant Mr. Selatin Gashi on the procedure of registration of the Referral, by requesting from him additional documents, while on 15.06.2012, the first Applicant Mr. Selatin Gashi submitted the filled Referral in the Constitutional Court by attaching the challenged decisions of the Municipality of Mitrovica. The Referral was registered in the Court with No. KI 58/12.

8. On 21 August 2012, the Court notified the Municipal Assembly of Mitrovica and the Ministry of Local Government Administration on the registration of Referral and requested from the latter to present their comments on this matter, but the Municipality of Mitrovica did not respond to the Court's request.
9. On 16 October 2012, Mr. Selatin Gashi submitted to the Court the additional material, by which he alleged to determine the status of a "victim" in the case he filed in the Constitutional Court as a consequence of the municipal decisions, which he challenges.

Case KI 66/12

10. On 3 July 2012, the Court received through mail a Referral from the lawyer Mr. Halit Azemi, by which he requested from the Court that "the Constitutional Court declares the decision of the Municipality of Gjilan of 24.06.2011 as inadmissible and unlawful."
11. On 4 July 2012, the Court notified the Applicant that he should fill in the standard Referral form of the Court for the individual referrals in the Court, while on 13 July 2012, Mr. Halit Azemi from Gjilan submitted the Referral to the Constitutional Court and the same was registered under the number KI 66/12.
12. On 29 October 2012, the Court received through mail a written response from the Municipality of Gjilan, where the reasons of rendering the decision, which is challenged by the Applicant are explained and to this response the relevant documentation, which was the ground for rendering the decision of the Municipal Assembly on conditioning of the access to some services of the municipal administration, was attached.

Case KI 94/12

13. On 24 September 2012, the Court received through mail a Referral from the third Applicant—the group of the LDK Municipal Assembly Members of Viti, whereby requesting: "We address the Constitutional Court through this letter for review of legality of the Decision No. 01-013/1395 rendered in the session held on 21.04.2011."
14. On 15 October 2012, the Constitutional Court notified the Municipality of Viti and the Applicant "The LDK Municipal Assembly Members of Viti" on registration of the Referral and at the same time requested from both parties to

submit to the Court all necessary documentation for reviewing the Referral including the challenged decision and the communication with the Ministry of Public Administration on this matter, but the Court has not received any response by the parties within requested time limit.

15. On 31 August 2012, the Ministry of Local Government Administration replied, by stating that it was aware of the conditioning of citizens in some municipalities of Kosovo and attached to this response the explanatory letter for the presidents of the municipalities, qualifying these conditionings as unlawful and adding that the municipalities do not have legal competence to condition citizens with fulfillment of their obligations towards Publicly Owned Enterprises.
16. On 11 October 2012, the President of the Court rendered the decision on joining the cases KI 58/12, Ki 66/12 and KI 94/12 in a single case, since they have the same subject of review and decided that the Judge Arta Rama is appointed as the Judge Rapporteur, while the Review Panel to be composed of: Almiro Rodrigues, Presiding, Altay Suroy, and Deputy President of the Court Ivan Čukalović.
17. On 18 October 2012, the Review Panel after the review of the report, recommended to the full Court, that by taking into consideration the need for further clarifications on the matter from the parties in the procedure, the clarification of the legal stance of MLGA and the interest of public, to schedule a public hearing on the matter which is the subject of review in the Court and this recommendation was unanimously voted. At the same time, it was scheduled that the public hearing to be held on 3 December 2012.

Summary of facts

18. On 26.04.2012, the Municipal Assembly of Mitrovica rendered the Decision No.02/06-22557/8 and on 07.07.2011 the Decision No. 02/06-3401/5 on the conditioning of the access of citizens and businesses with the office in MA Mitrovica to the municipal services and the proof of the payment of obligations towards KRU "Mitrovica" and KRM "Uniteti."
19. The decisions had this content:
 1. By this decision all businesses are CONDITIONED that when applying for their registration and business permits they must provide proof (certificate) that they have fulfilled their obligations (debts) towards KRU "MITROVICA" j.s.c."

2. Households are CONDITIONED that when registering their vehicles, construction permits and transfer of real estate they must show proof (certificate) that they have fulfilled their obligations (debts) towards KRU "MITROVICA" j.s.c."
20. The second decision had the first two items completely identical, only instead of KRU"MITROVICA" the obligations had to be fulfilled to KRM"UNITETI"
21. On 24.06.2011, the Municipal Assembly of Gjilan rendered the Decision no. 01 No.16/10608 of 24.06.2011 on Restriction of access to services of the municipality with the payment of bills for waste and water.
22. This decision was voted again in the same form and content also in December 2012.
23. With respect to the challenged matter, the Decision had this content:

Article 1

"This decision determines the types of municipal services, which are restricted by the municipal administration authorities of Gjilan due to non-payment of bills for waste and water."

Article 2

"2 Limitation of providing the municipality services means non-delivery (failure) of a certain services by the directorates of the municipality administration to the natural and legal entity, until the fulfillment of its obligation"

'.....'"

Article 4

Item 4." The tax on motor vehicle

24. The Applicant Mr. Halit Azemi addressed the Ministry of the Local Government Administration (hereinafter: MGLA) on 01.12.2011, but according to his claim, he has not received any response.
25. On 29.07.2011, the Municipal Assembly of Viti rendered the Decision 01/013/1355 on Conditioning of Certain Municipal Services with Payment of Bills for Waste and Water, which applies to all natural and legal persons of the Municipality of Viti.
26. The Decision had this content regarding the part, which is challenged:

II

“Restriction of providing of certain municipality services, means non-delivery (failure) of a service by the directorates of the municipality administration to the entities of the right (natural and legal persons), until the fulfillment, respectively, partial payment of debts owed to the KRM, HIGIENA"JSC Gjilan and KRU" HIDROMORAVA "JSC Gjilan for the services carried out by these companies.

“.....”

V.

Paragraph (1)

“The restricted services for natural persons and legal entities, the users of the services under the requirements from item 4 of this decision, will be applied and it shall include:

Item 4. "Tax on motor vehicle"

27. On 20.06.2012, MLGA submitted the explanatory letter to all presidents of the municipalities of Kosovo and in the last item of this explanatory letter had decisively determined that the conditionings of the municipalities on the access to municipal services with fulfillment of obligations towards publicly owned enterprises do not have legal ground and as such should not be applied”.
28. The MLGA further explains in this letter that pursuant to Article 128 of the Law 02/L123 on Business Organizations as well as the Law 03/L 087 on Joint Stock Companies, which has foreseen that the joint stock companies are liable for their debts and other obligations, with all their assets and property and nobody else is not liable for the debts of the joint stock companies”.
29. On 08.08.2012, by the request for review of legality of the decision of the Municipality of Viti No.01-013/1395 (the decision on the conditioning of the citizens and legal entities), the MGLA requested from the Municipality of Viti that the abovementioned decision to be harmonized with the legislation in force within the time limit of 30 days, because it is unlawful in the existing form.
30. On 21 August 2012, the Council for Defense of Human Rights and Freedoms (hereinafter: CDHRF), the conditionings made by some municipalities of Kosovo for receiving some municipal services with payment of obligations towards the publicly owned enterprises and of joint stock companies, had

qualified as violation of human rights and violation of Article 29 of the Universal Declaration on Human Rights, by stating that " Article 29 of the Universal Declaration on Human Rights, respectively, item 2 explicitly provides that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law..."

Public hearing

31. On 3 December 2012, the Court held public hearing, where the following parties participated and were heard:
 - a) The Applicants Mr.Selatin Gashi, Mr.Halit Azemi but the Applicant of the Referral KI 94/12 (the LDK Municipal Assembly Members of Viti) although duly invited, was absent.
 - b) The opposing parties: the Municipality of Mitrovica, represented according to power of attorney by Mr. Rustem Musa, Municipality of Gjilan, represented according to power of attorney by Mr.Bardhosh Dalipi and Municipality of Viti, according to power of attorney by Mr.Agim Sylejmani.
 - c) Ministry of Local Government Administration, in capacity of the interested party by Mr. Besim Murtezani.
 - d) The Ombudsperson Institution, in capacity of the interested party, represented by Mr. Isa Hasani.
 - e) The Council for Defense of Human Rights and Freedoms, in capacity of the interested party, represented by Mr. Behxhet Shala.

Statements of parties in the hearing

32. Mr. Selatin Gashi in the public hearing stated among the other that "the decision of the Assembly violates his and other citizens' fundamental rights and especially of those who have motor vehicles and as a consequence of this decision, he had to register his vehicle in the name of his friend, with residence in the village, who does not have obligations towards the water supply company and to the public company of waste and that he drives his personal vehicle under the authorization by the person on whose name the vehicle is registered."
33. Mr. Halit Azemi stated that "By the decision of the Municipality of Gjilan the fundamental rights of citizens of the Municipality of Gjilan and especially

Article 55 of the Constitution were violated. He also stressed that since July of this year, the enterprise Higjena has been privatized.”

34. The representative of MA Mitrovica Mr. Musa ”stated that as soon as they received the explanatory letter from MLGA about unlawfulness of the decisions of the municipal assemblies regarding the conditioning, he insisted on their annulment and finally the Municipal Assembly rendered the Decision No. 02/06-4896/11 of 30.10 2012, by which the decision on the conditioning of citizens has been repealed” which is the subject of review in this public hearing, by presenting before the Court the copy of the decision. He also stated that he agrees with the conclusion of the parties that the decision of the municipality was unlawful and that he voted against it.”
35. The representative of the Municipality of Gjilan stated that he remains in entirety behind the written response, which the municipality of Gjilan sent to the Constitutional Court on 29 October 2012. On the question of the Applicant Mr. Azemi why the municipality has not repealed its decision after the MLGA letter, he responded that “this is certainly the matter of time when this decision will be abrogated.”
36. The representative of the Municipality of Viti stated that ”at the time when the decision on conditioning was rendered, another law was in force and now there is another law on publicly owned enterprises and after the MLGA letter, they have repealed the decision.”
37. The MLGA representative stated that ”the legal position of MLGA regarding the decision on conditioning of citizens with payment of bills to publicly owned enterprises was made public to the presidents of the municipalities through explanatory letter, where it was clearly stated that these decisions do not have legal ground” and furthermore “we think that they are not even democratic and that they affect the area of human rights.”
38. The Ombudsperson representative stated that ”the conditioning of citizens on restriction of services only in some municipalities, puts in unequal position these citizens in relation to citizens of other municipalities, where these restrictions have not been applied and that it puts them in unequal positions before the law. The representative of OI stated that: “the restrictions of citizens in some municipalities the way it was done, is inadmissible and it violates and it diminishes human rights.
39. The CDHRF representative in the public hearing stated that ”these decisions present flagrant violations of human rights, that our public reaction on this

issue gave the necessary effect and that the MLGA reaction was quite quick, when it sent the explanatory letter to the presidents of the municipalities.”

Summary of facts after the public hearing

40. On 30 April 2013, the Municipality of Gjilan notified officially the Constitutional Court that in the session held on 23 April 2013, it rendered the Decision on Abrogation of the decision on restriction of providing services with payment of bills for waste and water” by sending through the official electronic mail the copy of the Decision 01 no. 16-35734 of 23.04.2013.

Assessment of admissibility of Referral and Merits

41. In order to be able to adjudicate the Applicant’s Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

42. In this respect, the Court always takes into account the Article 112.1 of the Constitution, where it is provided:

1. *“The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.”*

and,

Article 113.7 of the Constitution, when assessing the individual referrals where it is provided that:

“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.

43. The Court takes also into consideration Rule 32 of the Rules of Procedure, where it was determined that

- (4) *The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*

44. Being aware of the decision of MA Viti of 3 October 2012 “On Abrogation of the Decision No. 01-13/1395 of 09.08.2011”, the decision of MA-Mitrovica No. 02/06-4896/11 of 30.10.2012, by which it abrogated the decision on conditioning of citizens and the decision of MA of Gjilan 01 no. 16-35734 of 23

.04,2013, by which the decision of this municipality on restrictions of certain administrative services to the citizens of the Municipality of Gjilan was also abrogated and being aware of the consequences of these decisions in the final status of the requests filed for review before it, by reminding its case laws in the previous identical cases (see among the other, case KI 11/09 of the Constitutional Court of the Applicant Tomë Krasniqi of 07.06.2011), the Court does not find it reasonable to assess the fulfillment of full formal requirements of admissibility regarding the cases KI 58, Ki 66 and KI 94/12.

45. The Court considers that rendering of decisions by the municipal assemblies on abrogation of previous decisions on restriction of providing certain administrative services in the respective municipalities, where the Applicants come from and by which the violations of human rights are alleged during the time these referrals were in review by the Court, but certainly before the Court renders final decision, shows that the Applicants' position has significantly changed and that the Referral is without rationale and that the aim sought was completely attained. In light of this, the Court considers that there is no merit to further pursuing the matter and such a justification was clearly expressed by the Court also in the Decision KI 63/12 of 10 December 2012 (see decision on striking out the Referral of the Constitutional Court KI 63/of the Applicant MP Ms. Alma Lama and 10 other Members of the Assembly 10.12.2012)
46. However, the Court has the power and the duty to address this question particularly in view of the Court's own Rules of Procedure.
47. In fact, Rule 32 (4) of the Rules of Procedure of the Constitutional Court states that the Court may dismiss a Referral when it determines that a claim is moot or when it does not otherwise present a case or a controversy anymore. The Rule, to the extent relevant, provides as follows:

Rule 32

Withdrawal of Referrals and Replies

- (4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.
 - (5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision. .
48. Also, the European Convention on Human Rights, which pursuant to Article 22 para.1 of the Constitution of Kosovo is directly applied in the Republic of Kosovo provides, to the extent relevant, the following:

Article 37. Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
 - a) the applicant does not intend to pursue his application; or
 - b) the matter has been resolved; or
 - c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

49. As a general procedural principle, the Court should not make decisions on cases where the issue is no longer a live one and the case becomes moot. Courts do not deal with hypothetical or academic cases. This is a generally accepted principle of behavior of courts and it is analogous to the principle of judicial restraint.

50. Furthermore, the Court has already established (in Case 11/09, Decision of 30 May 2011, paragraph 46 of the Applicant Tomë Krasniqi), which states that "The concept of mootness is a well recognized legal concept. It can arise where a case, in an abstract or hypothetical issue, presents itself for decision by a Court. There are good grounds for a Court not dealing with hypothetical situations. Without a real, immediate or concrete issue to be decided upon, any decision that the Court would now make in relation to this Referral would have no practical effect".

51. Taking into account the decisions of the municipal assemblies on abrogation of decisions by which the citizens of the municipalities of Mitrovica, Gjilan and Viti would be restricted in enjoying certain administrative decisions in these municipalities, the Court concludes that the Applicants now have no case or controversy pending in relation to the constitutionality of these decisions and the issue is effectively moot, therefore

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, unanimously on 5 July 2013:

DECIDES

- I. TO STRIKE OUT the Referral, pursuant to Rule 32.4 of the Rules of Procedure.
- II. This Decision shall be notified to the Parties and, in accordance with Article 20-4 of the Law on Constitutional Court, shall be published in the Official Gazette.
- III. This Decision is effective immediately.

Judge Rapporteur


Arta Rama- Hajrizi

President of the Constitutional Court


Prof. dr. Enver Hasani

