



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

Prishtina, on 11 August 2014
Ref.no.:RK692/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI65/14

Applicant

Bajram Santuri

Constitutional review of the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013; of the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012; of the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012; of the Decision of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010; of the Notification of the Office of the Disciplinary Counsel, ZDP/12/zp/910, of 29 November 2012; and of the Notification of the Ministry of Labor and Social Welfare, of 21 January 2011

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Bajram Santuri from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013; the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012; the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012; the Decision of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010; of the Notification of the Office of the Disciplinary Counsel, ZDP/12/zp/910, of 29 November 2012; and the Notification of the Ministry of Labor and Social Welfare, of 21 January 2011.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions, which are *“allegedly unfair because they have denied to Applicant the property right”*.
4. In this respect, it is not referred to any specific constitutional provision.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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 Constitutional Court

6. On 1 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 11 and 24 April 2014, the Applicant submitted the additional documents to the Court.
8. On 6 May 2014, the President of the Court, by Decision No. GJR. KI65/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI65/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).
9. On 22 May 2014, the Applicant was notified of the registration of Referral. On the same date, a copy of the Referral was sent to the Basic Court in Prizren, to the Basic Court in Gjilan, to the Court of Appeal of Kosovo, to the Office of the Disciplinary Counsel and to the Ministry of Labor and Social Welfare.
10. On 1 July 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. In this Referral, the Applicant raises different issues related to the property right, disciplinary investigation against the judges, the claim for obstruction to possession, subsidiary indictment proposal and disability pension, conducted in various proceedings in the courts and other authorities of various instances and in the different time periods. In all other decisions and documents, contained in this Referral, the Applicant appears in the capacity of a subsidiary claimant, the responding party, and in some others he is not a litigating party.
12. On 15 February 2010, the Municipal Court in Prizren, by Decision C. no. 247/08, rejected as inadmissible the claim of the claimants MS, TS and NSH for confirmation of the nullity of the contract and the delivery of the real estate to the possession against the respondents KBI "Progres-Export" and G. K.
13. On 21 January 2011, the Ministry of Labor and Social Welfare notified the Applicant that *"under all laws which are applicable and are treated by the Ministry of Labor and Social Welfare, we inform you that you cannot be the user of the disability pension, because you are the user of the early pension in Sweden, as you have mentioned in the Referral too and to enjoy the disability pension, you should not be the user of any foreign pension"*.
14. On 25 September 2012, the Municipal Court in Prizren, by Decision C. no. 47/2000, suspended the legal contested proceedings of the Applicant against the respondents, the Municipality of Prizren and D. D.
15. On 31 October 2012, the Municipal Court in Gjilan, by Decision P. no. 43/10, rejected the subsidiary indictment proposal filed by the Applicant against the respondents E. GJ., M. P., N. SH. and T. S., accused for criminal offences of Falsifying Official Documents, under Article 348 paragraph 1 and Falsifying Documents under Article 332 paragraph 3 in conjunction with paragraph 1 of the Provisional Criminal Code of Kosovo (PCCK).
16. On 29 November 2012, the Office of Disciplinary Counsel, by Notification ZPD/12/zp/910, informed the Applicant that there is no legal ground to initiate the disciplinary investigation for the misconduct and the court procedure delay against the Judge of the Special Chamber, assigned with his case.
17. On 13 February 2013, the Basic Court in Prizren, by Decision C. no. 830/09, rejected as inadmissible the claim of the claimants M. S., Z. S., B. S. and N. SH. against the Applicant as the responding party, due to obstruction to possession.
18. On 23 September 2013, the Court of Appeal of Kosovo, by Decision CA. no. 791/13, approved as grounded the appeals of the litigating parties, quashed the Decision of the Basic Court in Prizren, C. no. 830/09, of 13 February 2013, and remanded the matter to the same court for retrial.

Applicant's allegations

19. In regard to the Judgment of the Municipal Court in Prizren, C. no. 247/08, of 15 February 2010, the Applicant alleges: *"[...] as it seems the delays are*

deliberate and are made intentionally, because 15 years have elapsed after the war and 50 years of the past system when by force and threats have occupied my property and have threatened with signing of the contract with KBI Progres [...]”.

20. As to the notification of the Ministry of Labor and Social Welfare, of 21 January 2011, the Applicant alleges: *“Ministry of Labor and Social Welfare informed me that I cannot be the user of the disability pension, because I am the user of the pension of Sweden, while it did not take into account that I have worked in Kosovo for 10-15 years as a teacher [...] and defined me this right by this partial and incorrect response [...]*”.
21. Regarding the Decision of the Municipal Court in Prizren, C. no. 47/2000, of 25 September 2012, the Applicant alleges that: *“why is the claim sent to the Ministry of Justice? – The reason is not provided to the unsatisfied party and in this suspension is camouflaged the claim against the former Prizren Municipality [...]*”.
22. Regarding the Decision of the Municipal Court in Gjilan, P. no. 43/10, of 31 October 2012, the Applicant alleges: *“due to irregularity of the work by the Municipal Court, which has not conducted investigations properly, and later did not send my appeal to the District Court and delayed the process deliberately, by sending the information that the administrator should not perform the work of a judge [...]*”.
23. As regards the Notification of the Disciplinary Counsel, ZPD/12/zp/910, of 29 November 2012, the Applicant claims among the other: *“[...] from this document of the Office of Disciplinary Counsel results another number SCA-11/19 which I am hearing for the first time from this document and before it was the number AC 664/10 which derived from C. no. 99/07 and this was formed from the revision 46/05 ...all these numbers are mixed in a matter of our heritage 207 are of land, in order to reoccupy, the same way they did in the old system [...]*”.
24. Regarding the Decision of the Court of Appeal of Kosovo, CA. no. 791/13, of 23 September 2013, the Applicant alleges: *“we have complained through the Basic Court, and we have also filed response to the appeal of the opposing party to attach to this Decision CA. nr. 791/13 as an evidence the document, where in no place are mentioned my appeals or my response against the appeal of the opposing party”*.

Assessment of admissibility

25. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
26. With regards to the Applicant's Referral, 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”.

27. The Court refers to Article 47 of the Law, which provides:

“Every individual is entitled to request from the Constitutional Court legal protection when considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

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

28. The Court also 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force”.

29. The Court also takes into account Rule 36 (1) b) and (3) c) of the Rules of Procedure, which provides:

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

a) all effective remedies that are available under the law against the Judgment or decision on the last effective remedy have been exhausted

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

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

c) the Referral was lodged by an unauthorized person;

30. In the concrete case, the Court notes that the Applicant has pursued different procedures in different periods of time and as consequence will review them separately.

Allegations regarding the Decision CA. No. 791/13 of the Court of Appeal of Kosovo of 23 September 2013

31. Concerning the Applicant's allegation regarding the Decision CA. no. 791/13, of 23 September 2013, of the Court of Appeal of Kosovo, the Court notes that the case has been remanded for retrial to the Basic Court in Prizren, meaning that this part of the Referral is premature due to the non-exhaustion of all legal remedies as it is provided by Article 113.7 of the Constitution.

32. The Court wishes to reiterate that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of the constitutional rights. (see case KI34/11, Applicant *Sami Bunjaku* Resolution on inadmissibility, of 8 December 2011).
33. Consequently this part of the Referral is inadmissible due to the non-exhaustion of legal remedies as it is provided by Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) a) of the Rules of Procedures.

Allegations regarding the Decision C.No.47.2000 of the Municipal Court in Prizren of 25 September 2012, Decision P.No.43/10 of the Municipal Court in Gjilan of 31 October 2012, Notification ZPD/12/zp/910 of the Office of the Disciplinary Counsel of 29 November 2012, Notification of the Ministry of Labor and Social Welfare, of 21 January 2011

34. As to the Applicant's allegation for: i) Decision C. no. 47/2000, of 25 September 2012, of the Municipal Court in Prizren, ii) Decision P. no. 43/10, of 31 October 2012, of the Municipal Court in Gjilan, iii) Notification ZPD/12/zp/910, of 29 November 2012, of the Office of the Disciplinary Counsel and iv) Notification of the Ministry of Labor and Social Welfare, of 21 January 2011, the Court notes from the documents contained in the Referral that the Applicant has not complained against the challenged decisions and notifications before the courts and other competent authorities, within preclusive deadlines under the applicable law in Kosovo.
35. The Court notes that the decisions and the notifications above are dated 2011 and 2012, while the Referral was submitted to the Court on 1 April 2014, respectively, in a period of time of 2 and 3 years, which is not in compliance with the four month deadline provided by Article 49 and Rule 36 (1) b) of the Rules of Procedure.
36. The Court recalls that the objective of the four (4) month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt with within a reasonable time and that past decisions are not continually open to challenge (See case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005, and *mutatis mutandis* see case no. KI140/13, the Applicant *Ramadan Cakiqi*, Resolution on inadmissibility, of 3 March 2014).
37. The Court reiterates that Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, require that the Applicants, after the exhaustion of all legal remedies, submit their referrals within the period of four (4) months of the legal time limit, from the day the final court decision was served.
38. Consequently, this part of the Referral is inadmissible because it is submitted out of the of four (4) month legal deadline specified in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

Allegations regarding the Decision C. NO. 247/08 of the Municipal Court in Prizren of 15 February 2010

39. Regarding the Applicant's allegations for Decision C. no. 247/08, of 15 February 2010, of the Municipal Court in Prizren, the Court notes that the Applicant was not the litigating party in that procedure.
40. Consequently, this part of the Referral is inadmissible because it was submitted by an unauthorized party as it is provided by Rule 36 (3) c) of the Rules of Procedure.
41. Based on what was said above, the Court declares the Referral inadmissible, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) a) b) and (3) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, and Rule 56 of the Rules of Procedure, on 1 July 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani