



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT
SEKRETARIA / SEKRETARIJAT / SECRETARIAT

Prishtina, 09 January 2013
No. ref.: RK337/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 74/12

Applicant

Agim Stublla

Request for constitutional review of the Resolution of the Supreme Court of the Republic of Kosovo PN.No. 410/2012, dated 5 June 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Agim Stublla from Lluzhan village, Podujeva municipality.

Challenged decision

2. The challenged decisions of the public authority, allegedly violating rights guaranteed by the Constitution, are the Resolution of the Supreme Court PN. No. 410/2012, dated 5. june 2012, Resolution of the District Court PN. No. 65/2012, dated 3 April 2012, Resolution of the Municipal Court in Lipjan KP. No. 30/2011, dated 8 December 2011 and Judgment of the Municipal Court in Lipjan P. No. 129/2009, dated 13 February 2010.

Subject matter

3. The subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo, on 7 August 2012, is the constitutional review of the Resolution of the Supreme Court PN. No. 410/2012, dated 5 June 2012, the Resolution of the District Court PN. No. 65/2012, dated 3 April 2012, Resolution of the Municipal Court in Lipjan KP. No. 30/2011, dated 8 December 2011 and Judgment of the Municipal Court in Lipjan P. No. 129/2009, dated 13 February 2010, whereby the Applicant requests from the Constitutional Court to annul decisions of the regular courts and review the court process according to the Article 442 of the Criminal Procedure Code of Kosovo.

Alleged violations of the rights guaranteed by the Constitution

4. The Applicant did not specify in his Referral particular violations of rights guaranteed by the Constitution.

Legal basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2010 (hereinafter: the Law), and Article 29 of Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. The Court has noticed that, earlier, on 13 September 2010, the Applicant filed a Referral to the Court with the same subject matter, which was registered in the respective register under number KI 84/10.
7. Concerning the Referral KI 84/10, Applicant of which was Mr. Stublla, on its session held on 23 February 2011, with majority of votes rejected the Referral as inadmissible.
8. On 7 August 2012, the Applicant submitted his Referral to the Constitutional Court.
9. On 4 September 2012, by Decision GJ.R 74/12, the President appointed judge Arta Rama-Hajrizi as Judge Rapporteur. On the same day the President appointed the Review Panel composed of judges Almiro Rodrigues (presiding), Kadri Kryeziu and Enver Hasani.
10. On 2 October 2012, the Constitutional Court notified the District Court in Prishtina and the Supreme Court regarding the registration of the Referral.
11. On 4 October 2012, the Supreme Court replied to the Court's request to submit comments on the Referral, stating that all the arguments concerning this matter were given in the reasoning of the decision.

Summary of facts

12. The Applicant served as police officer with the Kosovo Police Service since 12 March 2001.

13. In March 2009, the Applicant was accused of having committed a criminal offence - theft and on 13 February 2010, by decision P.No. 129/2011 of the Municipal Court in Lipjan was sentenced with three months imprisonment, which he would not serve, if, in the time-frame of one year, he does not commit another criminal offence.
14. All evidence submitted by Mr. Stublla in his new Referral concerning the Judgment of the Municipal Court in Lipjan P.No.129/2009 and Judgment of the Supreme Court PKL No. 69/2010, dated 6 August 2010, are completely the same as in the first Referral filed to this Court on 13 September 2010.
15. However, in his new Referral the Applicant as new facts not reviewed by the Constitutional Court has presented: Resolution of the Supreme Court PN. No. 410/2012, dated 5 June 2012, Resolution of the District Court PN. No. 65/2012, dated 3 April 2012, Resolution of the Municipal Court in Lipjan KP. No. 30/2011, dated 8 December 2011.
16. On 8 December 2011, Municipal Court in Lipjan issued a Resolution KP. No. 30/2011, acting upon the request for reopening of the criminal procedure, rejecting Applicant's request with reasoning that he did not provide any new evidence which would make a grounded request, and that he only repeated his allegations already reviewed by this court.
17. On 3 April 2012, the District Court in Prishtina acting upon Applicant's appeal issued the Resolution PN. No. 65/2012, with a reasoning that in this particular case the Applicant failed to meet legal requirements for reopening of the criminal procedure provided by Article 442 of CPOK, therefore, rejected his appeal as unfounded, and upheld the Resolution of the Municipal Court in Lipjan KP. No. 30/2011, dated 8 December 2011.
18. On 5 June 2012, the Supreme Court of Kosovo acting upon the Applicant's appeal issued the Resolution Pn. No. 410/2012, rejecting the appeal as inadmissible with the reasoning that the Resolution of the second instance court was final and that the appeal as a regular remedy was not allowed.
19. Finally, unsatisfied with the above-mentioned decisions, on 8 August 2012, the Applicant addressed, again, to the Constitutional Court of Kosovo.

Applicant's allegations

20. The Applicant alleges violation of his human rights guaranteed by the Constitution, without specifying what rights he alleges to have been violated.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution.
22. In this regard, the Court refers to the Rule 36 (1.c) and 36 (3.3) of the Rules of Procedure of the Constitutional Court, which stipulates:

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

c) The Referral is not manifestly ill-founded ”

and

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

(e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision;”

23. In this aspect, concerning the matter raised by the Applicant regarding the Judgment of the Municipal Court in Lipjan p. no 129/2009 and the Judgment of the Supreme Court PKL no. 69/2010, dated 6. august 2010. god., the Court finds that this matter has already been adjudicated by decision KI 84/10, and the Court will not re-adjudicate the constitutionality of these legal acts.

24. In this regard, even the ECtHR in cases (X vs. Germany application No. 1860/63, Duclos vs. France application No. 20940/92, dated 17/12/96, emphasized that the Referral shall be rejected as inadmissible in cases when the Applicant repeats the appeal that was formulated in the previous Referral.

25. However, having in mind that the Applicant, in capacity of new facts, has submitted the Resolution of the Supreme Court PN. no. 410/2012, dated 5 June 2012, Resolution of the District Court PN. no. 65/2012, dated 3 April 2012, and Resolution KP. no. 30/2011 of the Municipal Court in Lipjan, dated 8 December 2011, concerning the procedure of the request on repetition of the procedure, which is different from the procedure of the protection of legality that was the subject matter of the first Referral, the Court, based on the ECtHR case law “Where the applicant submits new information, the application will not be essentially the same as a previous application”, will consider the new facts of the new Referral, (see Chappex v. Switzerland application no. 20338/92, dated 12/10/1994 and Patera v. the Czech Republic application no. 25326/03, dated 10/01/2006)

26. Based on this, the Constitutional Court having reviewed the constitutionality of the Resolution of the Supreme Court PN. No. 410/2012, date 5 June 2012, Resolution of the District Court PN. No. 65/2012, dated 3 April 2012, and the Resolution of the Municipal Court by KP. No. 30/2011, dated 8 December 2011, did not find any fact that there was violation of any of the rights guaranteed by the Constitution. In fact, the Applicant apart from expressing the dissatisfaction with the Resolutions of the regular courts the Applicant has not argued convincingly his allegations that the trial was not “fair and impartial”, in what way he was treated unequally and what stage of the proceedings was unconstitutional.

27. Article 102 [General Principles of the Judicial System] item 3 of the Constitution provides that “Courts shall adjudicate based on the Constitution and the law”, and Article 103 [Organization and Jurisdiction of Courts] item 2 of the Constitution clearly stipulates that;” The Supreme Court of Kosovo is the highest judicial authority.”

28. The Constitutional Court is not the fact finding court, and in this case emphasizes that the fair and complete determination of factual situation is under full jurisdiction of the

regular courts and that its role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and therefore it cannot act as the "court of fourth instance", (see, *mutatis mutandis*, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

29. The fact that the Applicant is unsatisfied with the outcome, cannot serve as the right to file an arguable claim on violation of the Article 31 of the Constitution (*see mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005).
30. In these circumstances, the Constitutional Court does not find any fact that the regular courts have not "adjudicated fair and impartially", by taking decisions that might have violated his rights guaranteed by the Constitution.
31. The Applicant "did not sufficiently substantiate his allegations", therefore, the Court finds that pursuant to the Rule 36 paragraph 2 items c and d, the Referral should be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution and Rule 36.2 (c) and (d.) of the Rules of Procedure, in its session held on 21 November 2012, unanimously,

DECIDES

- I. TO REJECT 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

Arta Rama-Hajrizi



President of the Constitutional Court

Prof. Dr. Enver Hasani