



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

Prishtina, on 20 October 2017
Ref. No.: RK 1140/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI149/16

Applicant

Municipality of Klina

**Constitutional review of Decision CML. No. 13/2016, of the Supreme
Court of the Republic of Kosovo, of 13 September 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by the Municipality of Klina (hereinafter: the Applicant), represented by Ali Shala, the legal representative - state advocate of the Municipality of Klina.

Challenged decision

2. The Applicant challenges Decision CML. No. 13/2016 of the Supreme Court of Kosovo, of 13 September 2016. The challenged decision was served on the Applicant on 31 October 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the aforementioned decision of the Supreme Court. The Applicant does not refer to the violation of any constitutional provision in particular.

Legal basis

4. The Referral is based on Article 21.4 and 113.7 of the Constitution, Article 47 and 48 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 January 2017, the President of the Court appointed Judge Selvete Gërxhaliu Krasniqi as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 27 February 2017, the Court notified the Applicant about the registration of the Referral and requested him to complete the Referral within a period of 7 (seven) days.
8. On the same date, the Court sent a copy of the Referral to the Supreme Court of the Republic of Kosovo.
9. On 3 March 2017, the Applicant submitted the required documents.
10. On 06 September 2017, 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. On 12 May 2010, the Applicant and N. P. "Morina Automobile" (hereinafter: the creditor) signed a contract for tow transport services.
12. On 29 September 2011 and 25 May 2012, the parties signed two more contracts for the purpose of extending cooperation between them.

13. Meanwhile, disagreements arose between the Applicant and the creditor for the fulfillment of the financial obligations to the latter for the services provided.
14. On 10 March 2015, the creditor submitted to the Office of Private Enforcement Agent the execution proposal, due to the failure of the Applicant to meet the financial obligations. The proposal was submitted on the basis of an “authentic document”, invoice no. 267 of 25 February 2015.
15. On 11 March 2015, the Office of Private Enforcement Agent allowed the creditor's proposal for execution of invoice no. 267 of 25 February 2015.
16. On 23 March 2015, the Applicant in the Basic Court in Peja filed an objection against the execution order of the Office of Private Enforcement Agent.
17. On 6 August 2015, the Basic Court in Peja by Decision C.P. No. 7/15 partially approved the Applicant's objection, and partially upheld the execution order of the Office of the Private Enforcement Agent.
18. On 23 September 2015, the Applicant filed an appeal with the Court of Appeals against the aforementioned decision of the Basic Court.
19. On 28 January 2016, the Court of Appeals by the Decision AC. No. 3906/20 rejected the appeal of the Applicant as ungrounded and upheld the Decision of the Basic Court.
20. On 2 March 2016, the Office of the Private Enforcement Agent ordered the Ministry of Finance (Treasury Department) to execute payments in accordance with the court decisions.
21. On 14 March 2016, the Applicant submitted a request for revision to the Supreme Court against the abovementioned decisions of the Court of Appeals and of the Basic Court. The Applicant submitted a revision alleging essential violation of the provisions of the enforcement and contested procedure, erroneous application of the substantive law by proposing that the creditor's request for execution be declared as out of time; or that decisions of the lower instance courts be annulled and the case be remanded for retrial.
22. On 25 March 2016, the Ministry of Finance issued a payment order for execution of the court decisions.
23. On 25 April 2016, the Applicant requested the Office of the Chief State Prosecutor to file a request for protection of legality against the Decision of the Court of Appeals and of the Basic Court
24. On 12 May 2016, the Office of the Chief State Prosecutor informed the Applicant that he had approved its initiative and submitted to the Supreme Court a request for protection of legality against the abovementioned decisions

of the lower instance courts. The State Prosecutor filed a request for protection of legality by claiming an essential violation of the provisions of the contested procedure, erroneous application of the substantive law, with the proposal that the challenged decisions be quashed and the case be remanded to the first instance court for retrial.

25. On 13 September 2016, the Supreme Court by Decision Cml. No. 13/2016, rejected as ungrounded the request for protection of legality of the State Prosecutor filed against the decisions of the Court of Appeals and of the Basic Court.

Applicant's allegations

26. The Applicant alleges that *"We consider that in the present case we are dealing with the submission of the Referral based on provisions of Article 113, paragraph 4, of the Constitution of the Republic of Kosovo because we assess that: the Municipality is authorized to challenge the constitutionality of laws or acts of the Government which violate the municipal responsibilities or decrease the incomes of the Municipality, if the respective Municipality was affected by that law or that act."*
27. The Applicant further alleges that *"In the present case, on 31 October 2016 the Municipality of Klina, as debtor, received Decision Cml. No. 13/2016, of the Supreme Court of Kosovo, of 13 September 2016, by which the case was finally decided upon to our disfavor, therefore, we considered that we have been harmed by that unlawful Decision and also by the actions and the act of the Ministry of Finance – Department of Treasury in Prishtina which on 25 March 2016 directly transferred the money from the bank account of the Municipality of Klina to the bank account of LE "Morina Automobile" in Klina, allegedly according to order P. No. 2019/15, of the private enforcement agent Gj. R. headquartered in Gjakova, of 2 March 2016, on allowing the execution, and this was done according to our registry that we have from the Free Balance Report of 25 March 2016, in the amount of 88.798.76."*
28. Finally, the Applicant requests the Court to declare the Referral admissible and to annul all court decisions and the order of the Ministry of Finance.

Admissibility of the referral

29. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
30. In this respect, the Court refers to paragraphs 1, 4 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that,

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties,

[...]

4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.

[...]

7. 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.”

31. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes:

[...]

4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.

32. The Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 48

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.

Article 49

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...”.

33. The Court also takes into account Rule 36 (2) (a) and (c) of the Rules of Procedure, which specifies:

“(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

- a) the referral is not prima facie justified, or;*
- c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution;”*

34. In the present case, the Court notes that the Applicant has exhausted all legal remedies in accordance with paragraph 7 of Article 113 of the Constitution and submitted the Referral within 4 (four) month legal deadline as defined in Article 49 of the Law.

35. The Court must also ascertain whether the Applicant has presented and substantiated its allegations filed in accordance with Article 48 of the Law.

36. The Court is also mindful of the legal status of the Municipality as a legal person under Article 5 of the Law No. 03/L-040 on Local Self-Government
37. In this regard, the Court as a preliminary matter notes that, despite the allegations of the Applicant, the Referral under review will be assessed within Articles 21.4 and 113.7 of the Constitution, because the challenged decisions are court decisions, while the execution act of the Ministry of Finance was rendered as a consequence and in the function of the implementation of the court decisions (See, Constitutional Court of the Republic of Kosovo: Case No. KI48/14 and KI49/14, Applicant, *Municipality of Vushtrri, Constitutional review of Decisions of the Basic Court in Mitrovica - Branch in Vushtrri*, Resolution on Inadmissibility of 17 May 2016, paragraph 49).
38. The Court notes that the essence of the Referral is the Applicant's allegation that the legal decisions and the payment order of the Ministry of Finance were issued without any legal or constitutional basis.
39. In this regard, the Court also notes that the Applicant does not refer to the violation of any of the constitutional provisions that provide guarantees for the protection of human rights and fundamental freedoms, to the extent they are applicable to public-legal persons.
40. Regarding the Applicant's allegations of "*the court decisions rendered without any legal basis*", the reasoning of the Supreme Court can be summarized as follows: "*the Court of Appeals has found that the first instance court, by correctly and completely determining the factual situation, has correctly applied the substantive law provisions, when the first instance court partially upholds the execution order of the private enforcement agent. According to the assessment of this court, the creditor has conducted the services for the debtor, on the basis of the contracts established within the time period between 12 May 2010 and 24 May 2015, by conducting services of transportation and parking of seized vehicles by the Kosovo Police... Setting from such a situation of the case, the Supreme Court of Kosovo has found that the lower instance courts, on the basis of the determined factual situation, has correctly applied the substantive law, when they found that the statement of claim of the Creditor is partially grounded.*"
41. From the content of the Referral, it results that the courts have assessed all central issues such as: (i) the assessment of contracts and the legal-obligational relationship between the Applicant and the creditor; (ii) the assessment of "authentic document" for allowing execution; (iii) assessing the exact debt that the Applicant owed to the creditor for the services rendered; and (iv) assessing the statute of limitation of a part of the debt that the Applicant owed to the creditor.
42. The Constitution does not guarantee favorable outcome to the Applicants' case nor does it allow the Court to question the substantive fairness of the outcome of a civil dispute, where more often than not one of the parties wins and the other loses (Constitutional Court of the Republic of Kosovo: Case no. KI142/15

Applicant: *Habib Makiqi*, Constitutional review of Judgment Rev. No. 231/2015, of the Supreme Court of Kosovo, of 1 September 2015, Resolution on Inadmissibility of 1 November 2016, paragraph 43).

43. In the light of the foregoing considerations, the Court notes that the Applicant had the benefit of adversarial proceedings; that it was able, at various stages of those proceedings, to adduce the arguments and evidence it considered relevant to its case; that it had the opportunity of challenging effectively the arguments and evidence adduced by the opposing party; that all its arguments which, viewed objectively, were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decisions were set out at length; and that, accordingly, the proceedings taken as a whole were fair. (See, for example the Case *García Ruiz v. Spain*, [GC], application no. 30544/96, Judgment of 21 January 1999, paragraph 29).
44. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
45. In fact, it is the role of the regular courts to interpret and apply the rules of procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain* [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).”
46. The Constitutional Court recalls that it is not a fact-finding court and that the complete determination of factual situation is within the full jurisdiction of the regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore, it cannot act as a „*fourth instance court*” (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, see also: *mutatis mutandis* in case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
47. Finally, the Court considers that the Applicant does not refer to any of the constitutional provisions and generally describes and raises legal issues without accurately stating and without raising his allegations at the constitutional level as foreseen by Article 48 of the Law.
48. In these circumstances, the Court considers that the Applicant has not substantiated the allegations of violation of fundamental human rights and freedoms guaranteed by the Constitution. The facts of the case do not show that the Court has acted contrary to the procedural guarantees established in the Constitution.
49. The Applicant failed to *prima facie* justify his Referral and, therefore, cannot claim to be subject of a violation of any right guaranteed by the Constitution.

50. Based on the aforementioned considerations, the Referral, on constitutional basis is manifestly ill-founded and is to be declared inadmissible as established by Article 113.7 of the Constitution, foreseen by Article 48 of the Law and as further specified in Rule 36 (2) (a)) and (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law, and Rule 36 (2) (a) and (c) of the Rules of Procedure, unanimously

DECIDES

- I. TO DECLARE the Referral 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Selvete Gërxhaliu-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi