



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 14 December 2010
Ref. No.: RK 45/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 67/09

**Applicant
Idriz Ratkoceri**

**Constitutional Review of Constitutional review of Judgment of the
Municipal Court of Prishtina, P. 1216/2004,
dated 3 February 2006**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Idriz Ratkoceri, residing in Obiliq.

Challenged court decisions

2. The decision challenged by the Applicant is the Judgment of the Municipal Court of Pristina, No. P.1216/2004, dated 3 February 2006.

Subject matter

3. The Applicant requests the Court to evaluate the constitutionality of the Judgment of the Municipal Court of Pristina, No. P.1216/2004, dated 3 February 2006. In addition to this judgment the Applicant refers to the following judgments:
 - a. Judgment of the District Court of Prishtina No. Ap.203/06, dated 8 May 2007;
 - b. Judgment of the Supreme Court Pkl.no.56/07, dated 20 October 2008; and
 - c. Judgment of the Supreme Court Pkl.no.106/2009, dated 23 April 2010.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 20 of the Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo of 16 December 2009, (hereinafter: "the Law") and Section 54 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 3 December 2009, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 16 March 2010, the Referral was communicated to the Supreme Court, which, so far, has not submitted any comments.
7. On 14 December 2010, the Review Panel, consisting of Judges Robert Carolan (Presiding), Deputy President Kadri Kryeziu and Judge Iliriana Islami, considered the Report of the Judge Rapporteur Ivan Čukalovič and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

8. On 3 February 2006, the Municipal Court of Pristina, in its Judgment P.no.1216/2004, sentenced the Applicant to one year and 6 months of imprisonment for unlawfully undertaking construction works under Article 294 (1) of Provisional Criminal Code of Kosovo (hereinafter: the "CPCCK") in conjunction with Article 23 of the CPCCK and ordered the Applicant to pay a compensation in the amount of 103.459,62 Deutsche Marks (52.898,06 Euros).
9. The Municipal Court ruled that, on 11 June 2001, the Applicant had, together with his son, endangered the life and body of a third person by re-constructing

a building in Obiliq without a permit, causing substantial damages to the property of that person.

10. The Applicant appealed against the Municipal's Court's judgment to the District Court of Pristina, claiming a violation of essential criminal procedure provisions, an erroneous evaluation of the factual situation, and a violation of the CPCK. He also challenged the court's decision regarding the damages caused and the payment of compensation. On 8 May 2005, the District Court declared the appeal to be unfounded and upheld the judgment of the Municipal Court of Pristina.
11. Against this judgment the Applicant appealed to the Supreme Court, which, on 20 October 2008, found that the appeal was unfounded and upheld the judgments of the lower courts.
12. On 23 September 2009, the State Prosecutor submitted to the Supreme Court a request for the protection of legality against the decision of the District Court of Pristina, claiming that the dispositions of the judgment were not clear and in contradiction with the facts of the case.
13. On 23 April 2010, the Supreme Court rejected the State Prosecutor's request for protection of legality as unfounded.

Applicant's allegations

14. The Applicant alleges that the decisions of the regular Courts are unlawful for the following reasons:
 - a. He has nothing to do with the re-construction of the building, which was the object of the criminal proceedings, because he lives in his own house at Meto Bajraktari Street, No. 20 in Obiliq since 1965, while his son lives in Hasan Street in Pristina.
 - b. His son had a construction permit (Urban Permit No. 04-351-519, dated 21 May 2002).
 - c. The re-construction of the building has not endangered the building of the third person.
15. Hence, the Applicant alleges that he has been sentenced to imprisonment for a criminal act which he has not committed and that his constitutional rights have been violated.
16. The Applicant does not specify which articles of the Constitution have allegedly been violated in his case.

Assessment of the admissibility of the Referral

17. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

18. As one of the requirements, the Applicant must establish that he has submitted the Referral within a period of 4 months, as stipulated by Article 49 of the Law. However, it appears from the Applicant's submissions that the final court decision regarding his case, was the judgment of the Supreme Court of 20 October 2008, served upon him on 13 November 2008, whereas he submitted his Referral to the Constitutional Court only on 3 December 2009, that is more than 4 months after the entry into force of the Law (see Article 56 of the Law).
19. Although it is true that, on 23 April 2010, the Supreme Court decided on the request for protection of legality, submitted by the State Prosecutor – who was not a party to the proceedings - on 23 September 2009, this procedure cannot be taken into account for the calculation of the 4 months period with respect to the court proceedings in the Applicant's case (see: *mutatis mutandis*, Brumarescu v. Romania, Application 28342/95, Judgment of 28 October 1999, para. 62).
20. In these circumstances, the Applicant cannot be considered to have met the requirement of Article 49 of the Law.
21. The Court also refers to Article 48 of the Law, which provides:

“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.”
22. Under the Constitution, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
23. The Constitutional Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).
24. The Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005), as required by Article 113.7 of the Constitution and Article 48 of the Law.
25. It follows that the referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, 48 of the Law, and Section 54 (b) of the Rules of Procedure, 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

Ivan Čukalovič



President of the Constitutional Court

Prof. Dr. Enver Hasani

