



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 11 June 2018

Ref. No.: RK 1274/18

RESOLUTION ON INADMISSIBILITY

in

case No. KI109/17

Applicant

Ejup Koci

**Request for constitutional review of the length of proceedings in the
Court of Appeals of the Republic of Kosovo regarding the case
C. No. 0355/2011**

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Ejup Koci from village Polac, Municipality of Skenderaj (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge any specific act of public authorities. He challenges the reasonableness of the length of the proceedings in relation to the adjudication of case C. No. 0355/2011 in the Court of Appeals.

Subject matter

3. The subject matter relates to the Applicant's request for the constitutional review of the length of proceedings regarding the adjudication of case C. No. 0355/2011 in the Court of Appeals.
4. As a result of the excessive length of proceedings, the Applicant alleges violation of the fundamental rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity] and Article 46 [Protection of Property]. The Applicant also alleges a violation of the fundamental rights guaranteed by the European Convention on Human Rights (hereinafter: the ECHR), namely Article 6 (Right to a fair trial) in conjunction with Article 13 (Right to an effective remedy).

Legal basis

5. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 [Types of Decisions] 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 8 September 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 11 September 2017, the President of the Court appointed Judge Ivan Ćukalović as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Krasniqi-Gërxhaliu.
8. On 20 September 2017, the Court notified the Applicant about the registration of the Referral and requested him to submit a Referral form to the Court.
9. On 22 September 2017, the Applicant sent a completed Referral form to the electronic address of the Court.
10. On 28 September 2017, the Court notified the Applicant that he submitted the form without a signature, and consequently, requested him to sign the Referral form and submit the latter to the Court within 7 (seven) days of receipt of the letter of the Court.

11. On 2 October 2017, the Applicant submitted the requested document to the Court.
12. On 13 October 2017, the Court notified the Court of Appeals about the registration of the Referral and requested it to submit a copy of the file relating to case C. No. 0355/2011, within seven (7) days from the day of receipt of the Court's letter.
13. On 10 November 2017, the Court repeated its request to the Court of Appeals, requesting that the copies of the case file regarding the case C. No. 0355/2011 be urgently submitted to the Court.
14. On 15 November 2017, the Court of Appeals of Kosovo submitted comments to the Court and a copy of the requested file.
15. On 30 May 2018, 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

16. On an unspecified date, the construction of the inter-municipal road Skenderaj-Vushtrri had begun. The Applicant claims to have property rights over the some cadastral parcels located along that road. He claims that his property has been expropriated without any decision on expropriation and that he has not been compensated for the damage caused.
17. On 14 June 2010, the Applicant submitted a claim for compensation of immovable property to the Municipality of Skenderaj.
18. On 21 June 2010, the President of the Municipality of Skenderaj responded to the Applicant's request by issuing a Conclusion, by which he sent the Applicant's request for further review to the Directorate for Geodesy, Cadastre and Property.
19. On 11 October 2010, the Directorate for Geodesy, Cadastre and Property [Decision No. 02/464-584] rejected the Applicant's request for compensation of immovable property due to lack of competence to decide on the matter. Further on, the Directorate for Geodesy, Cadastre and Property informed the Applicant that he should address the Government of the Republic of Kosovo, as the latter is competent to decide on expropriations related to the construction of inter-municipal roads.
20. On 17 August 2011, the Applicant filed a claim with the Municipal Court in Skenderaj against the Municipal Assembly in Skenderaj. By his claim, the Applicant requested the restitution of immovable property and compensation of damage.
21. On 25 September 2012, the Municipal Court in Skenderaj [Decision C. No. 0355/2011] was declared incompetent on a territorial basis to resolve the

Applicant's dispute with the Municipal Assembly in Skenderaj. In addition, by this Decision, the Municipal Court in Skenderaj decided that after the decision becomes final, the case should be referred to the Supreme Court of Kosovo as a competent court to decide on the matter.

22. In the meantime, there were changes in the structure of the regular judiciary, whereby according to Law No. 03/L-199 on Courts (supplemented and amended by Law No. 04/L-171 on Amending and Supplementing the Law No. 03/L-199 on Courts), the Applicant's case was transferred to the Basic Court in Prishtina, the Department for Administrative Affairs (hereinafter: the Basic Court in Prishtina).
23. On 27 February 2015, the Basic Court in Prishtina [Decision A. No. 1342/2012] reviewed the Applicant's claim and decided to remand the claim to be supplemented, requesting: i) to specify the claim in a clear manner; ii) to specify accurately which is the respondent administrative authority; and iii) to specify the administrative act that he challenges. The Basic Court in Prishtina considered that it could not proceed further on the initial statement of claim of the Applicant because it was incomplete and unclear and as such did not meet the legal criteria that the claims should have to initiate an administrative dispute. The Basic Court in Prishtina further emphasized that the Applicant stated in the claim that the subject of the dispute is "*the restitution of immovable property and the compensation of damage*" while in the "*referate of the claim he speaks about the expropriation procedure, which makes the statement of claim unclear, and consequently the jurisdiction of the court in this matter*".
24. On an unspecified date, the Applicant submitted the supplement and specification of his claim to the Basic Court in Prishtina.
25. Upon the receipt of the completed and specified claim, the Basic Court in Prishtina addressed the Court of Appeals with the request that the latter decide what court has the subject matter and territorial jurisdiction to decide on this legal matter.
26. On 23 April 2015, the Court of Appeals [Decision AA. No. 1/2015] assigned the Basic Court in Mitrovica, Branch in Skenderaj, General Department, Division for Civil Matters (hereinafter: the Basic Court in Mitrovica) as a court with subject matter and territorial jurisdiction to conduct the court proceedings in the legal case upon the claim of the claimant.
27. On 14 March 2016, the Basic Court in Mitrovica [Decision C. No. 145/2015] received the case for consideration and decided to terminate the contested procedure initiated by the Applicant's claim against the Municipal Assembly in Skenderaj, requesting the restitution of the immovable property and compensation of damage. The Basic Court in Mitrovica considered that this issue should be interrupted until a preliminary matter is resolved which deals with the review of inheritance of the immovable property which is the subject of the dispute based on of the claimant's proposal, in this case the Applicant.

28. Against the abovementioned Decision of the Basic Court in Mitrovica, the Applicant submitted an appeal to the Court of Appeals.
29. The Court of Appeals has not yet decided on the Applicant's appeal. Therefore, the Applicant's case is still pending before the Court of Appeals.

Applicant's allegations

30. The Applicant requests the constitutional review of the length of proceedings regarding the adjudication of the case C. No. 0355/2011, in the Court of Appeals, alleging that in this way the rights guaranteed by Article 6 (Right to a fair trial) in conjunction with Article 13 (Right to an effective remedy) of the ECHR and the rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity] and 46 [Protection of Property] of the Constitution have been violated.
31. Regarding his allegation of a trial within a reasonable time limit, the Applicant alleges that his claim filed in 2011 has not yet been resolved by the regular courts. In this regard, he claims that he has been awaiting a resolution of the case for more than 7 years and that the latter is still pending before the Court of Appeals. The Applicant further alleges that his case is being assigned another number by each court to which his case is being transferred due to problems with the determination of subject matter jurisdiction, and thus, his case is not being considered as a case filed in 2011 but as a newly registered case.
32. The Applicant further alleges that although his case has to do with expropriation and as such should be handled urgently, the regular courts do not consider this fact when dealing with his claim.
33. As to the exhaustion of legal remedies, the Applicant states that there are no legal remedies by which he could request "*acceleration and respect*" of his right to a trial within a reasonable time. According to him, he filed a request for speeding up the case with the President of the Basic Court in Prishtina as well as with the Court of Appeals – however, these actions have been unsuccessful in terms of expediting the procedures for solving his case.
34. The Applicant now requests the Court to declare his Referral admissible; to hold a violation of his right to a trial within a reasonable time limit; to compensate him, according to his monetary request, due to violation of the right to a trial within a reasonable time limit.

Comments submitted by the Court of Appeals of Kosovo

35. Comments submitted by the Court of Appeals of Kosovo:

"We inform you that this case with No. C. No. 0355/11, by Decision of the Municipal Court in Skenderaj of 25.09.2012, is declared incompetent. Then the case is transferred under the jurisdiction of the Basic Court in Prishtina Department for Administrative Matters. This Department acts to complete the claim, and then to establish the competence. The Court of

Appeals of Kosovo with AA. No. 1/15 of 23.04.2015 assigns the Basic Court in Mitrovica - Branch Skenderaj to decide, and the case here receives the number C. No. 145/15, and it is decided by the Decision of 14.03.2016, then we have the appeal against this Decision and the case now is with us for decision with number AC. No. 2176/2016”.

Admissibility of the Referral

36. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and the Rules of Procedure.

37. Initially, the Court refers to the provision of paragraph 7, of Article 113 [Jurisdiction and Authorized parties] of the Constitution which foresees:

“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”.

38. The Court also refers to Articles 48 and Article 49 of the Law, which establish:

Article 48 [Accuracy of the Referral]

“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 [Deadlines]

“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. [...]”.

39. Regarding the fulfillment of these criteria, the Court notes that the Applicant is an authorized party to submit this Referral to the Court and that he has exhausted all legal remedies available to him. The Court also notes that the Applicant has clearly specified what rights and freedoms he claims to have been violated and he submitted his Referral within time limit. In this case, the Court considers that the Applicant has fulfilled the procedural requirements provided by Article 113.7 of the Constitution and Articles 48 and 49 of the Law.

40. In addition to the criteria above, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if: [...] (d) the referral is prima facie justified or not manifestly ill-founded.

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

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights; [...]

(d) the Applicant does not sufficiently substantiate his claim”.

41. In this regard, the Court recalls that the subject of review in the present case is the Applicant's request for constitutional review of the excessive length of the proceedings regarding the adjudication of the case C. No. 0355/2011 in the Court of Appeals. The Applicant alleges that this length of proceedings has violated him the right to a final judgment within a reasonable time by the regular judiciary.
42. More specifically, the Applicant alleges that his case “*has been unjustly transferred*” to various courts since 2011 and that the latter remains pending before the Court of Appeals, which has not yet rendered a final decision.
43. The Court will assess the Applicant's allegations in the light of the guarantees provided by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which guarantee the trial within a reasonable time. This Court, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental human rights and freedoms guaranteed by the Constitution in accordance with ECtHR decisions. Consequently, for purposes of reviewing the Applicant's allegations, the Court will refer to the ECtHR case law as well as its case law pertaining to the trial within a reasonable time.
44. In this regard, the Court refers to paragraph 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, defining the following:

Article 31.2 of the Constitution

“2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”

Article 6.1 of ECHR

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

45. Before assessing the main issue in this Referral, which is the submission of the Applicant for the length of proceedings in resolving the case C. No. 0355/2011, the Court notes that the Applicant has not submitted any decision on expropriation or other documentation related to any expropriation procedure. Likewise, the Court notes that even in the copy of the file submitted by the Court of Appeals there was no decision on expropriation or any information

regarding any possible expropriation procedure. In this regard, the Court emphasizes that the Applicant merely alleges that an alleged property of his own has been expropriated without any decision on expropriation but has not brought any evidence or documentation that would prove such facts as stated by him.

46. In the present case, the Court should answer the question whether the right of the Applicant to fair and impartial trial within a reasonable time has been violated.
47. In this regard, the Court reiterates that Article 6.1 of the ECHR requires the Contracting States to organise their legal systems in such a way that the competent authorities can meet the requirements of the Article in question, including the obligation to hear cases within a reasonable time and, where necessary, join the proceedings, suspend them or reject the further institution of new proceedings (See, moreover, the Judgment of the ECHR in *Luli and others v. Albania* of 1 April 2014, submissions no. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, paragraph 91, see: case of the Constitutional Court, KI127/15, Applicant *Mile Vasović*, Resolution on Inadmissibility of 5 June 2017, paragraph 41).
48. As regards the length of the proceedings, the Court recalls the criteria established in the Judgment of the European Convention on Human Rights (hereinafter: the ECtHR), in case *Tomazic v Slovenia*, of 2 June 2008, complaint no. 38350/02, paragraph 54), where is established as it follows:

“As to the reasonableness of the length of the proceedings, the [ECtHR] reiterates that it must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute”.
49. The Court, referring to the case law of the ECtHR and its case law, assessed that the calculation of the process, the reasonable length of the proceedings, begins at the moment when the competent court starts the proceedings at the request of the parties for the establishment of a right or a legitimate claimed interest (see, case, *Erkner and Hofauer v. Austria ECtHR*, of 23 April 1987, paragraph 64; see also ECtHR case *Poiss v. Austria*, 23 April 1987, paragraph 50, and the case of the Constitutional Court No. KI127/15, *Mile Vasović*, Resolution on Inadmissibility of 15 June 2015, paragraph 43). This process is considered completed with the issuance of a final court decision by a competent court of the last instance (see case *Eckle v. the Federal Republic of Germany*, ECtHR, of 15 July 1982, paragraph 74).
50. In the present case, the Court notes that at issue are proceedings followed by the Applicant for the restitution of immovable property and compensation for the damage, for which there is still no final decision. The Applicant's initial claim was filed in August 2011 and still there is no final decision on this issue. The reasons why there is no final decision on a matter are those that make the Court decide whether the guarantees of Article 31 of the Constitution in

conjunction with Article 6 of the ECHR have been respected in a specific case or not.

51. As stated above, the Court will assess the Applicant's allegations in the light of the circumstances of the case and taking into account the following criteria: (i) the complexity of the case; (ii) the conduct of the Applicant; (iii) the conduct of the relevant authorities; and (iv) what was at stake for the Applicant in the present case.
52. As to (i) the complexity of the case, the Court finds that the Applicant's case as such is not of an extraordinary complexity but has become more complicated with the lack of clarity as to which court has the subject matter-jurisdiction and territorial jurisdiction to decide on the Applicant's case. In addition, as noted in the case file, the issue property holder with respect to the property for which the Applicant claims that it should be returned to him has not yet been resolved in this case. Consequently, the Applicant's case can be considered as relatively complex in terms of legal and factual situation and in this regard the alleged delays can be partly attributed to the complexity of the case.
53. As to (ii) the Applicant's conduct, the Court emphasizes that the effectiveness of the proceedings depends on the conduct of the parties involved in the proceedings (see *mutatis mutandis* Decision No. 11541/85 of the former European Commission of Human Rights of 12 April 1989, V.R. 70). The conduct of the Applicant in a proceeding should be considered in the context of the factual and legal aspect of the dispute in question.
54. In this regard, the Court recalls that applicants are entitled to make use of all relevant domestic procedural steps available by applicable laws. However, the Applicants must bear the consequences when such legal remedies result in delay (see: case *McFarlane v. Ireland* ECtHR, of 10 September 2010, application no. 31333/06, paragraph 148)..
55. In addition, the Court considers that the Applicant's conduct constitutes an objective fact not capable of being attributed to the courts, which is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 31 of the Constitution and Article 6 of the Convention (See case *Eckle v. Germany*, ECtHR, application no. 8130/78, Judgment of 15 July 1982, paragraph 82).
56. In this regard, the Court notes that the Applicant was instructed by the competent administrative bodies to address the Government of the Republic of Kosovo on expropriation issues as the latter is competent for expropriation in the inter-municipal roads. In the case file it cannot be seen that the Applicant has taken such a step. Instead, he filed a claim against the Municipal Assembly in Skenderaj with the Municipal Court in Skenderaj. The latter was subsequently declared incompetent to decide on the Applicant's claim and the case had to be transferred to another competent court. When the Applicant's claim was considered, the regular courts noted that it was unclear and not sufficiently precise and consequently asked him to specify and clarify his statement of claim. Following this action, and the request for determination of

jurisdiction, the Basic Court in Mitrovica decided to terminate the contested procedure initiated by the Applicant until the preliminary issue is resolved for the review of the inheritance of immovable property, which the Applicant claimed to be his, and that the latter has been expropriated without any decision. The Applicant appealed such a decision and the Court of Appeals is now in the process of rendering a decision - since March 2016.

57. Therefore, with regard to the Applicant's conduct, the Court finds that the Applicant himself has influenced the delay of the proceedings by his actions and inactions. More specifically, he influenced the length of proceedings as he submitted unclear requests to the institutions that were not competent to decide on those issues.
58. As regards (iii) the conduct of the relevant authorities, namely the regular courts, the Court finds that the excessive length of the proceedings cannot be attributed exclusively to them, since the delays as such had not derived from their passivity. The regular courts have been active and have taken concrete procedural and legal actions to reach a final epilogue for the Applicant.
59. As to (iv) what is at stake in the Applicant in this case, the Court notes that while the Applicant states that his Referral relates to the "*restitution of immovable property and compensation of damage*" - which would mean that he has already confirmed the property as his own; the regular courts have found that in fact there is no immovable property which has been confirmed to belong to the Applicant and that for the confirmation of such an allegation, the preliminary proceedings for the examination of inheritance property should be conducted. In this regard, it should be noted that what is at stake for the Applicant is the final solution of the immovable property issue which is the subject of the dispute.
60. In the light of the relatively complex circumstances of this case, taking into account the difficulties in determining the subject matter-jurisdiction and territorial jurisdiction, the Applicant's and the regular courts' conduct, the legitimate interests of the parties to the proceedings and the legal remedies used by the parties, the Court concludes that the respective courts were not passive from the moment they started to act.
61. In addition, based on the case file and in the light of the circumstances of the case, the Court finds that the regular courts had been active in the adjudication of the case since the moment they started the proceedings and, consequently, did not cause any further unreasonable length of the proceedings.
62. From the above, the Court concludes that the Applicant did not sufficiently substantiate his allegation of a violation of the fundamental rights guaranteed by the Constitution and the ECHR, namely the right to a fair trial within a reasonable time limit, because the facts presented by him do not in any way show that the regular courts denied him this constitutional right.

63. Therefore, the Applicant's Referral, on constitutional basis and in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure, is to be declared manifestly ill-founded, and therefore, inadmissible.

FOR THESE REASONS

In accordance with Article 113.1 and 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 3 May 2018, 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. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi