



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

Prishtina, on 11 June 2018
Ref. No.: RK 1271/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI18/18

Applicant

Isuf Musliu

**Request for constitutional review of the length of proceedings in case
C.No. 296/16 being conducted before the Basic Court in Prishtina -
Branch in Lipjan.**

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 Isuf Musliu, residing in Prishtina (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. 296/16, which is being conducted in the Basic Court in Prishtina - Branch in Lipjan (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the length of the proceedings regarding the adjudication of the case C. No. 296/16.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] 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 13 February 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 February 2018, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 23 February 2018, the Court notified the Applicant about the registration of the Referral and asked him to submit to the Court the referral form as well as the decisions of the regular courts regarding his case.
8. On 6 March 2018, the Applicant submitted the referral form and the decisions requested by the Court on 23 February 2018.
9. On 14 March 2018, the Court notified the Basic Court about the registration of the Referral and asked for clarification regarding the proceedings, which is being conducted regarding the Applicant's case No. 296/16.
10. On 20 March 2018, the Basic Court submitted to the Court the clarifications regarding the Applicant's case.
11. On 24 April 2018, the applicant submitted additional documents to the Court, and informed the Court that he filed criminal charges against some of the judges of the Basic Court that dealt with the case of the Applicant.

12. On 23 May 2018, the Applicant submitted a request to the Court to have his cases decided with urgency.
13. 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

14. On 2 August 2011, the Applicant filed a claim with the Basic Court for annulment of the contract on gift concluded between F.M., on one the hand, and H. M., A.M. and A.M. on the other, regarding a number of cadastral parcels in the village of Petrashtica, Municipality of Shtime (hereinafter: the contested parcels) and requested that the Basic Court confirm to the Applicant the property right over the disputed plots parcels.
15. On 9 September 2013, the Basic Court by Judgment C. No. 210/11, rejected as ungrounded the Applicant's claim.
16. On an unspecified date, the Applicant filed an appeal with the Court of Appeals in Prishtina (hereinafter: the Court of Appeals) against Judgment C. No. 210/11.
17. On 15 July 2016, the Court of Appeals by Decision CA. No. 3781/2013 annulled Judgment C. No. 210/11 of the Basic Court, and remanded the case for retrial to the Basic Court, where the case was registered under number C. No. 296/16.
18. On 10 August 2017, the Applicant sent a letter to the Basic Court claiming for the parties' absence at the hearing of 4 August 2017 and the failure of the Basic Court to ensure that the invitations were sent to the parties.
19. On 11 September 2017, the Applicant sent a letter to the Basic Court requesting that the parties to the proceedings be assigned temporary representative, as they do not appear at the hearing. The Applicant also requested that the next hearing be scheduled within the shortest possible time limit.
20. On 23 October 2017, upon the Applicant's request, the President of the Basic Court in Prishtina recused Judge Z.T., from the trial panel of the Applicant and replaced him with Judge A.G.
21. On an unspecified date, the Applicant filed a criminal report against Judge Z.T. for the criminal offense of misuse of official position or authority, regarding case C. No. 296/16.
22. On 16 January 2018, the Applicant was interviewed by the Prosecutor of the Prosecutor's Office in Prishtina, regarding the criminal report filed against Judge Z.T.

Applicant's allegations

23. The Applicant complains about the length of proceedings before the regular courts, especially with regard to the proceedings before the Basic Court.
24. The Applicant alleges that, despite the fact that the Court of Appeals, by remanding the case for retrial presented specific proposals for remedying the violations that have been committed by the Basic Court, it does not render decision on his case, despite the fact that the necessary legal requirements have been met to decide on the matter.
25. The Applicant alleges that he and his lawyers are facing the threat of the Basic Court that *"it has the right to keep the case in the drawer and never [...] consider it"*. According to the Applicant, Judge A.G. in the session of 9 February 2018 postponed the session on this case without any legal basis.
26. The Applicant emphasizes that the Basic Court *"has stopped the case for 12 years"* and is not holding retrial, nor it allows to transfer this case to another court.
27. In the end, the Applicant requests oblige the Basic Court to decide his case and the disputed parcels *"be returned to the possession"* of the Applicant.

Reply of the Basic Court

28. The Basic Court explained that after the Court of Appeals remanded the case for retrial, Judge Z.T. has taken the procedural actions, where, among other, a security measure in respect of the disputed parcels was imposed.
29. The Basic Court notified that for various reasons Judge Z.T. was excluded from the trial and the case was assigned to Judge A.G., who received the case on 31 October 2017 and immediately took procedural actions for the completion of the case by scheduling two hearings. The first hearing, scheduled on 10 January 2018 was not held, as the procedural requirements were not met, and was postponed for 9 February 2018.
30. Whereas the second session of 9 February 2018, according to the Basic Court, was not held due to Applicant's fault as he changed the lawyers several times and at the end *"revoked power of attorney to lawyers, and he does not have sufficient knowledge to represent himself, therefore, on this matter he was instructed that in the absence of professional knowledge he should engage a lawyer, [because] the subject is of a complex nature"*.

Assessment of the admissibility of the Referral

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

32. In this respect, the Court refers to paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized parties] of the Constitution which foresee:

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

[...]

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”.

33. The Court also refers to Article 49 [Deadlines] of the Law, which establishes:

“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. [...]”

34. In this case, the Court assesses that the Applicant has fulfilled the procedural requirements provided by Article 113.7 of the Constitution and Article 49 of the Law.

35. However, the Court also refers to Article 48 [Accuracy of the Referral] 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”.

36. In addition, the Court refers to Rule 36 (1) (d) and (2) (d) 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:

[...]

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

37. The Court reiterates that the Applicant alleges that his case is being delayed by the regular courts, in particular the Basic Court, and these allegations are related to his right to fair trial under Article 31.2 (Right to Fair and Impartial Trial) of the Constitution, and Article 6.1 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) (see: *mutatis mutandis*, case of the Constitutional Court KI40/17, Applicant: *Muharrem Bytyqi and others*, Resolution on Inadmissibility of 17 July 2017, paragraph 32).

38. In this regard the court refers to Article 31 of the Constitution and Article 6 of the ECHR:

Article 31.2 [Right to Fair and Impartial Trial] of the Constitution

[...]

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations [...] within a reasonable time [...]."

Article 6.1 (Right to a fair trial) of ECHR

"1. Everyone is entitled to a fair and public hearing within a reasonable time [...]."

39. In order to examine the grounds of the Applicants' allegations regarding the violations of the constitutional rights and freedoms related to rendering decisions within a reasonable time, the Court will deal with: *i)* determining the period of the length of the proceedings before the competent institutions; *ii)* the relevant principles regarding the length of proceedings, and *iii)* the reasonableness of the duration of the proceedings before the regular courts.

i) Period to be taken into account

40. In the present case, the Court notes that in August 2011, the Applicant filed a claim with the Basic Court for annulment of the contract on gift concluded between F.M. on the one hand, and H. M., Af. M. and Ar.M. on the other, and confirmation of the ownership right over the disputed parcels.
41. In this regard, when determining the period of time to be taken into account, the Court shall take as the beginning of the procedure the month of August 2011, which is the date when the Applicant filed a claim with the Basic Court and 13 February 2018, when the Applicant filed a Referral with the Court.
42. Therefore, the Court notes that the period to be taken into consideration in relation to the Applicant's allegation of violation of the right to fair trial under Article 31.2 of the Constitution, in conjunction with Article 6.1 of the ECHR, is 6 (six) years and six months..

ii) Relevant principles

43. The Court further notes that in accordance with the consistent case law of the European Court of Human Rights (hereinafter: the ECtHR), the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the individual case having regard to the criteria laid down in the ECtHR case-law, in particular, (a) the complexity of the case, (b) the conduct of the parties to the proceedings, (c) the conduct of the competent court or other relevant authorities, and (d) the importance of what is at stake for the Applicant in the litigation (see ECtHR Judgment of 7 February 2002,

Mikulić v. Croatia, No. 53176/99, of 7 February 2002, paragraph 38; see also the case of Constitutional Court KI23/16, Applicant *Qazim Bytyqi and others*, Resolution on Inadmissibility of 5 May 2017, paragraph 58).

iii) Analysis of the reasonableness of the length of the proceedings

44. The Court notes that this case relates to the Applicant's claim for annulment of the gift contract between the third parties regarding the disputed parcels and the confirmation of the Applicant's property right over those cadastral parcels. That is, because the Applicant alleges before the regular courts that the contested parcels were acquired with his contribution.
45. As to the complexity of the case, the Court refers to the case law of the ECtHR that clarified that the complexity of the case may be related to factual and legal issues, but may also be related to the involvement of certain parties to the proceedings or a certain number of evidence that the regular courts should consider (see, *mutatis mutandis*, ECtHR Judgment of 19 September 1994, *Katte Klitsche de la Grange v. Italy*, No. 21/1993/416/495, paragraph 55, Judgment of the ECtHR of 7 February 2002, *H. v. United Kingdom*, No. 9580/81, paragraph 72, ECtHR Judgment of 15 October 1999, *Humen v. Poland*, 26614/95, paragraph 63.)
46. The Court notes that the Applicant's case pertains to 5 (five) different parties involved in the proceedings, some of whom live abroad. The Court also notes that the Basic Court held that the dispute was complex because of the nature of the case and the issues to be addressed.
47. In these circumstances, the Court finds that the case is reasonably complex.
48. As to the conduct of the parties in the case, the Court notes that after the Applicant's case was remanded by the Court of Appeals, and the appointment of Judge A.G. as a judge in this case, for which the Applicant mainly complains, two hearings were scheduled, the first hearing failed because there were no procedural conditions to be held, because some of the parties to the proceedings did not receive the summons. As for the second hearing, the Court recalls that the Basic Court maintained that this hearing was not held because the Applicant withdrew the power of attorney for his lawyer and was advised to appoint a lawyer due to the complexity of the case.
49. The Court also notes that the Applicant had changed lawyers several times, and requested the recusal of Judge Z.T. He also requested the engagement of an expert to assess the Applicant's contribution to the purchase of disputed parcels. These procedural actions have also caused delays in the conduct of the proceedings.
50. 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 should also take into account the consequences in case the legal remedies used can affect the delay. The Court considers that the conduct of the

Applicants constitutes an objective fact which cannot be attributed to the courts and must be taken into account in the finding whether the proceedings continued beyond the reasonable timeframe required by the provisions of Article 31 of the Constitution and Article 6 of the Convention (See ECtHR cases, *McFarlane v. Ireland*, of 10 September 2010, application No. 31333/06, paragraph 148; *Eckle v. Germany*, ECtHR, Application No. 8130/78, Judgment of 15 July 1982, paragraph 82; See also the case of Constitutional Court KIO7/15, Applicant *Shefki Zogiani*, Resolution on Inadmissibility of 23 September 2016, paragraph 55).

51. As to the conduct of the relevant courts and other public authorities, the Court notes that the proceedings before the Basic Court when deciding on case C. No. 2010/11 lasted approximately 2 (two) years. The proceedings before the Court of Appeals that was completed by Decision CA. No. 3781/2013 lasted for almost 2 (two) years and ten months. After having been remanded for retrial to the Basic Court, the Applicant's case is reviewed by this court for approximately 1 (one) year and five months.
52. Regarding the procedure that is being conducted in the Basic Court, it states that immediately after the case was remanded, the procedural actions have been taken, imposing a security measure on the disputed parcels, the judge of the case was replaced upon the request of the party for disqualification and two sessions to review the case were scheduled.
53. In these circumstances, the Court finds that the regular courts conducted their proceedings with a reasonable carefulness and were not passive in relation to the Applicant's case.
54. As to what was at stake for the Applicants in this dispute, the Court notes that the Applicant's referral relates to the annulment of a gift contract and the confirmation of the ownership right over the disputed parcels. Therefore, the Court finds that waiting to take over the possession of the contested parcels was of a considerable significance, but was not of such a binding nature as to require special urgency by the courts.
55. In conclusion, the Court finds that the entire period of length of the proceedings before the regular courts of 6 (six) years and six months cannot not be considered unreasonable, given the complexity of the case, the conduct of the parties and what was at stake for the Applicant (see: *mutatis mutandis*, the ECtHR Judgment of 27 June 2000, *Frydlender v. France*, No. 30979/96, paras. 43-46; and the ECtHR Judgment of 8 June 2006, *Sürmeli v. Germany*, No. 75529/01, paras. 128-134).
56. Therefore, the Court finds that the Applicant did not substantiate his allegation that there has been a violation of the right to determination of his rights and obligations within a reasonable time, as it is guaranteed by Article 31 (2) of the Constitution and Article 6 (1) of ECHR.

57. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rules 36 (1) (d), 36 (2) (d) of the Rules of Procedure, in the session held on 30 May 2018, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

