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

Prishtina, 21 October 2019
Ref. no.:RK 1452/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI21/18

Applicant

Jakup Siqani

Constitutional review of Decision CN. No. 102017 of the Supreme Court of the Republic of Kosovo of 13 November 2017 and Decision Ac. No. 1298/2016 of the Court of Appeals of 21 August 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Jakup Siqani from the Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [CN. No. 10/2017] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 13 November 2017 and the Decision [Ac. no. 1298/2016] of the Court of Appeals of 21 August 2017 in conjunction with the Decision [C. no. 644/2014] of the Basic Court in Prishtina (hereinafter: the Basic Court) of 11 January 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision of the Supreme Court, which allegedly violated the Applicant's fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law], 7 [Values], 31 [Right to Fair and Impartial trial], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution and Articles 6 (Right to a fair trial), 13 (Right to an effective remedy) and Article 1 of Protocol No. 1 (Protection of property) of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

5. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

6. On 20 February 2018, the Applicant submitted the Referral to the Court.

7. On 22 February 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Ivan Čukalović (Presiding), Almiro Rodrigues and Selvete Gërxhaliu-Krasniqi.

8. On 26 February 2018, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 2 March 2018, the Applicant submitted to the Court a supplementary letter supplementing his allegations made in the original Referral.

10. On 16 June 2018, the term of office of the Judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the term of office of the Judges: Altay Suroy and Ivan Čukalović ended.
11. On 9 August 2018, the President of the Republic of Kosovo appointed the new Judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Nexhmi Rexhepi and Remzije Istrefi- Peci.

12. On 23 September 2018, taking into consideration that the term of office of the aforementioned four Judges had expired, the President of the Court on the basis of the Law and the Rules of Procedure Decision KSH. KI21/18 appointing a new Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Safet Hoxha and Remzije Istrefi-Peci.

13. On 11 September 2019, after having reviewed the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. On 12 March 2007, the Applicant acting in the capacity of buyer, concluded a contract on sale with SOE *"Elektrotehna"* having its seat in Belgrade, in the capacity of the seller, concerning the immovable property located in Pristina (hereinafter: the Contract). The said Contract was certified on the same day in the Belgrade Municipal Court under the mark "OV. no. 4127/0". On 2 December 2013, an annex to the above Contract was signed under the mark "OV. no. 217987/2013" (hereinafter: the Contract Annex). It has been certified by the Belgrade Municipal Court.

15. On 30 December 2014, the Applicant addressed the Basic Court in Prishtina with a proposal for recognition of the Contract and the respective Annex, certified by the Belgrade Municipal Court, on 12 March 2007 respectively on 2 December 2013.

16. On 11 January 2016, the Basic Court by Decision [C. No. 644/2014] rejecting the Applicant's request on the ground that the contract in question was not a court decision. By the above decision, pursuant to Article 11 (Subject Matter Jurisdiction of the Basic Court) of Law No. 03/L-199 on Courts (hereinafter: the Law on Courts), Articles 3 (Appropriate implementation of law on contestable procedure), 11 (Judgment for the matter out session), 14 (Territorial competence) and 19 (Complaint suspension) of Law No. 03/L-007 on Out-Contentious Procedure (hereinafter: LOCP) and Articles 86, 87 and 93 of the Law on Resolving Conflicts of Laws with Regulations of Other Countries of 1982, the Basic Court reasoned, inter alia, (i) that in the procedure of recognition of foreign decisions, the court decides on their recognition in cases where the authorities of foreign countries are competent to decide on family matters and only *"when we have to do with judgments, decisions or notarial acts"*; (ii) that the contract for which recognition is sought represents only the *"legalization of signatures between the parties"*; in addition, (iii) since the immovable property is located in the Republic of Kosovo, the authority competent for the legalization of the signature is the Municipal Court in Prishtina and not the Court in

Belgrade; and (iv) given the fact that the contract was concluded with the socially-owned enterprise, the relevant requests and procedures had to be addressed to the Kosovo Trust Agency (hereinafter: the KTA). Regardless of the refusal to recognize the contract in question, the Basic Court emphasized that the claimant could initiate litigation proceedings for the recognition of ownership rights over the immovable property in question.

17. On 24 March 2016, the Applicant submitted an appeal to the Court of Appeals against the aforementioned decision of the Basic Court, alleging violations of the provisions of the contested procedure and erroneous application of the substantive law, proposing that his appeal be upheld and the challenged decision modified so that the Contract and its Annex be recognized as foreign judgments. In his appeal, *inter alia*, the Applicant specifically stated (i) that he had purchased the immovable property at a public auction for the sale of immovable property by SOE *"Elektrotehna"* which was going through bankruptcy and based on decision [VII. St.773/02] of the Commercial Court in Belgrade, of 18 December 2006; and (ii) that on 25 January 2007 he was declared the winner of the aforementioned auction, as confirmed by the Commission of the SOE *"Elektrotehna"* appointed by the Bankruptcy Panel of the above Commercial Court. The Applicant also specifically challenged the findings of the Basic Court concerning (i) the non-recognition of the contract in question as a court decision, and (ii) the territorial jurisdiction of the Belgrade Municipal Court. With regard to the first, the Applicant emphasized that, given that the conduct of the bankruptcy proceedings was based on the decision [VII. St. 773/02] of the Belgrade Commercial Court of 18 December 2006, the contract in question is based upon a court decision; and, as regards the second, he stated that, given that the seat of the socially-owned enterprise in bankruptcy was in Belgrade, the competent court in Belgrade had jurisdiction to conduct the bankruptcy proceedings. The Applicant also challenged the KTA's jurisdiction over his case.

18. On 21 August 2017, the Court of Appeals by decision [Ac. no. 1298/2016] dismissed the Applicant's appeal as unfounded and upheld the decision of the Basic Court. The Court of Appeals confirmed the findings of the Basic Court as to the nature of the contract in question and territorial jurisdiction.

19. On 27 September 2017, the Applicant filed with the Supreme Court a "request for extraordinary review of the decision" [Ac. no. 1298/2016] of the Court of Appeals, wherein he reiterated the same appeal claims.

20. On 13 November 2017, the Supreme Court by decision [Rev. no. 10/2017] dismissed as inadmissible the Applicant's request for extraordinary review of the decision [Ac. no. 1298/2016] of the Court of Appeal.s The Supreme Court reasoned that the *"request for extraordinary review of the decision"* does not constitute a legal remedy under the applicable laws in the Republic of Kosovo, that is, pursuant to the Law on Courts and the LCP.

Applicant's allegations

21. The Applicant alleges that the decision [Rev. no. 10/2017] of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by

Articles 3, 7, 31 and 54 of the Constitution and Articles 6 and 13 and Article 1 of Protocol no. 1 of the ECHR.

22. The Applicant does not specify the alleged violations of the aforementioned Articles of the Constitution and the ECHR, but basically claims that by rejecting his *"request for extraordinary review"*, the Supreme Court violated his fundamental rights and freedoms guaranteed by the Constitution, because it allegedly applied the wrong law in his case, that is, the LCP instead of the LOCP. In this context, the Applicant specifically emphasizes that *"the subject-matter of the dispute was in out-contentious and not in contested procedure, but, the Supreme Court of Kosovo rejected as inadmissible the request for extraordinary review of the decision of the Court of Appeals"*.

23. The Applicant also before the Court reiterates the allegations he has made before the regular courts concerning (i) the nature of the Contract and his assertion that it must be treated as a judicial decision and must accordingly be recognized bythe courts of the Republic of Kosovo, and (ii) the territorial jurisdiction of the courts in Belgrade to certify the contract in question. As regards the latter, the Applicant also emphasizes before the Court that the circumstances of the concrete case do not correspond with the *"classic purchase of immovable property, which would impose the application of the provisions of the applicable Law on Obligational Relationships"* under which the court in the territory of which the immovable is located would be competent. In addition, he states that the *"legal actions for the sale of property in bankruptcy proceedings conducted by the Commercial Court in Belgrade (Republic of Serbia) took place before Kosovo declared independence"*, a fact which according to the applicant, was not taken into account by regular courts when rendering their decisions.

24. Finally, the Applicant requests the Court to declare his Referral admissible and to declare invalid the Decision [CN. no. 10/2017] of the Supreme Court of 13 November 2017 and the decision [Ac. no. 1298/2016] of the Court of Appeals of 21 August 2016 in conjunction with the decision [C. no. 644/2014] of the Basic Court of 11 January 2016 or remand his case to the Supreme Court for reconsideration and adjudication.

Admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, foreseen by the Law and further specified by the Rules of Procedure.

26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *"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".

27. In addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accurracy of the Referral, which provide:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

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".

28. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party challenging the act of a public authority, namely the decision [CN. no. 10/2017], of 13 November 2017 of the Supreme Court, after having exhausted all the legal remedies established by the law. The Applicant also stated the fundamental rights and freedoms he claimed to have been violated, in accordance with the requirements of Article 48 of the Law.

29. The Court further should also examine whether the requirements laid down in Article 49 [Deadlines] of the Law and paragraph (1) (c) of Rule 39 [Admissibility Criteria] of the Rules of Procedure, are met. They provide as follows:

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..."

Rule 39 [Admissibility Criteria]

"(1) The Court may consider a referral admissible if:

[...]
c) the referral is filed within four(4) months from the date on which the decision on the last effective remedy was served on the Applicant, and [...]."

30. In this respect, the Court first recalls that, in 2007, the Applicant concluded a contract for the sale of immovable property in Prishtina with SOE "Elektrotehna" based in Belgrade. Subsequently, in 2013, he concluded an Annex to the Contract. The Applicant certified both documents in the Municipal Court of Belgrade. The Court further recalls that the proceedings before the regular courts of the Republic of Kosovo commenced at the moment when the Applicant, in 2014, submitted a request for recognition of a foreign court decision, namely the above Contract and the Annex to the Contract. After having considered his request, the Basic Court rejected the request as unfounded, stating, *inter alia*, that the contract sought was not a foreign court decision and as such could not be recognized in accordance with the laws and procedures that provide for the recognition of judicial decisions. The Applicant further appealed to the Court of Appeals, which also rejected the appeal as ungrounded, and upheld the reasoning of the Basic Court. Finally, the Supreme Court rejected the Applicant's request, stating that the *"request for extraordinary review of the decision"* submitted by the Applicant to the Supreme Court does not constitute the type of request established as a legal remedy under the LCP. The Applicant challenges this finding before the Court, stating that the Supreme Court applied the wrong law, that is, the LCP, instead of the LOCP.

31. However, and as stated above, when assessing whether the requirements established through Article 49 of the Law in conjunction with Rule 39 (1) (c) of the Rules of Procedure have been fulfilled, the Court must initially consider whether the requirement for the period of 4 (four) months provided in the Law and the Rules of Procedure is complied with in relation to *"the decision of the las effective legal remedy"* as required by the criteria foreseen in the Rules of Procedure.

32. Accordingly, the Court must assess whether the challenged decision namely Decision [CN. No. 10/2017] of 13 November 2017 of the Supreme Court, was rendered as a result of an effective legal remedy, namely, whether the *"request for extraordinary review of Decision"* that was filed against the Decision [Ac. No. 1298/2016] of 21 August 2017 of the Court of Appeals, was an effective legal remedy provided by law.

33. In this regard, the Court refers to the case law of the of the European Court of Human Rights (hereinafter: ECtHR) based on which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the human rights guaranteed by the Constitution. This case law, *inter alia*, sets out the fundamental principles on the basis of which the criterion for the six (6) month time limit in the context of the ECHR is calculated. (For more about the ECtHR case law on the 6-month time-limit rule, see the ECtHR Guide

on Admissibility Criteria of 30 April 2019; I. Procedural Grounds for Inadmissibility; B. Non-compliance with the six-month time-limit).

34. The primary purpose of this rule is to maintain legal certainty by ensuring that cases raising issues under the ECHR are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (See ECtHR cases, *Mocanu and Others v. Romania*, Judgment of 17 September 2014, paragraph 258; and *Lopes de Sousa Fernandes v. Portugal*, Judgment of 19 November 2017, paragraph 129; see also, among others, cases of the Court, No. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24; and case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39). It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised, since with the passage of time, any fair examination of the issues raised is rendered problematic (See ECtHR case, *Sabri Güneş v. Turkey*, Judgment of 29 June 2012, paragraph 39).

35. The rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (See ECtHR cases, *Idalov v. Russia*, Judgment of 22 May 2012, paragraph 128; *Sabri Güneş v. Turkey*, cited above, paragraph 40; and *Lopes de Sousa Fernandes v. Portugal*, cited above, paragraph 129).

36. The six (6) month period in the context of the ECHR and four (4) month in the context of the Constitution run from the date of the final decision in the process of exhaustion of an effective legal remedy (See EctHR case, *Paul and Audrey Edvard v. the United Kingdom*, Judgment of 14 March 2002; and *Lekić v. Slovenia*, Judgment of 11 December 2018, paragraph 65). The latter is the starting point for calculating the admissibility deadline. (See ECtHR cases, *Jeronovičs v. Latvia*, Judgment of 5 July 2016, paragraph 75; and *Alekseyev and Others v. Russia*, Judgment of 21 October 2010, paras 10-16). Moreover, it should be emphasized that only the legal remedies which are normal and effective to be taken into account, as an Applicant cannot extend the strict time-limit imposed under the Constitution and the ECHR, by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Constitution and the ECHR (See ECtHR case, *Lopes de Sousa Fernandes v. Portugal*, cited above, paragraph 132).

37. The Court recalls that in the circumstances of the present case, against Decision [Ac. No. 1298/2016] of 17 August 2017 of the Court of Appeals, the Applicant filed a *"request for extraordinary review of the Decision"* with the Supreme Court.

38. The Court also recalls that the Supreme Court, by its Decision, declared the Applicant's request inadmissible, arguing that the *"request for extraordinary review of the decision"* of the Court of Appeals does not constitute a legal remedy permitted under applicable laws in the Republic of Kosovo. More specifically,

the Supreme Court justified the rejection of the Applicant's request in the procedural aspect of admissibility by the following reasoning:

> *"[...] The request for extraordinary review of the decision [is] inadmissible.*
>
> *Thus, as is well known, the Law on Courts of the Republic of Kosovo, No. 03/L-199 entered into force on 01/01/2013. This Law under its Article Article 22, paragraph 1, subparagraph 1, determines the jurisdiction of the Supreme Court of Kosovo, which decides on extraordinary remedies against the final decisions of the courts of the Republic of Kosovo, as provided by law. Also, in Chapter XIV of the Law on Contested Procedure No. 03 L-006, which entered into force on 5.10.2008 foreesees the extraordinary legal remedies revision, repetition of the procedure and request for protection of legality.*
>
> *Due to the fact that according to the Law applicable in the Republic of Kosovo the request for extraordinary review of the decision is not foreseen as a legal remedy, the Supreme Court of Kosovo, based on the legal provisions of the Law on Contested Procedure, decided as in the enacting clause of this decision."*

39. The Supreme Court, through its Decision, emphasized that no such remedy exists under the LCP. In support of this reasoning, the Supreme Court called upon Chapter XIV of the LCP, which establishes (i) the revision (ii) the repetition of the procedure; and (iii) the request for the protection of legality as extraordinary legal remedies. The Applicant did not file any of them and accordingly the Supreme Court declared his request inadmissible.

40. The Court recalls the fact that the Applicant alleges that the Court applied the wrong law in his case, and that instead of the LCP, the LOCP should be applied. However, the Court notes that the "*request for extraordinary review of the Decision*" is not even established in the LOCP. The latter, in its Articles 27 and 28 and under the conditions laid down therein, shall determine (i) the revision; and (ii) the repetition of the procedures, as legal remedies in the out -contentious procedure through which a final Decision can be challenged. The Applicant did not file any of them against Decision [Ac. 1298/2016] of 21 August 2017 of the Court of Appeals with the Supreme Court. In addition, the Court emphasizes that, pursuant to Article 3 (Appropriate implementation of the law on contestable procedure) of the LOCP, the provisions of the law on out-contentious procedure shall be applied appropriately in the out -contentious procedure, unless otherwise provided by that law.

41. Therefore, the Court notes that the "*request for extraordinary review of the Decision*" is not a legal remedy established by the laws applicable in the Republic of Kosovo. For the same reasons, the Supreme Court also rejected the "*request for extraordinary review of the Decision*" as inadmissible. Consequently, the challenged Decision of the Supreme Court was not rendered as a result of an effective legal remedy, and it does not meet the criteria, established through the case law of the Court and the ECtHR, to be considered a "*final decision*". The final decision, in the circumstances of the present case, is Decision [Ac. no.

1298/2016] of 17 August 2017 of the Court of Appeals, because it is the last decision taken as a result of an effective legal remedy.

42. The Court notes that the Applicants have not submitted to the Court the evidence of when they were served with this Decision of the Court of Appeals. However, based on the case file the Court notes that the Applicant submitted the "*request for extraordinary review of the decision*" to the Supreme Court on 27 September 2017. Even if the latter was counted as the date on which the Applicants were served with the Decision of the Court of Appeals, the Referral of the Applicants to the Court against this Decision was filed on 20 February 2018, and therefore, out of the 4 (four) month deadline foreseen by the Law and the Rules of Procedure. (See, for a similar context, the case of the Court KI19/19 and KI20/19, Applicants *Muhamet Thaqi and Egzon Keqa*, Resolution on Inadmissibility, of 28 August 2019, paragraph 49).

43. The Court also emphasizes that upon receipt of Decision [Ac. No. 1298/2016] of 17 August 2017 of the Court of Appeals, nothing prevented the Applicant from addressing the Court with a request for constituional review of the Decision of the Court of Appeals. However, the Applicant did not do so, and by using a legal remedy not provided for by law and at the same time is ineffective, he missed the deadline of 4 (four) months to address the request to the Court (See: the Constitutional Court Case KI120/17, Applicant : *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 35)

44. In conclusion, based on the foregoing reasons, the Court concludes that the Referral was not filed within the legal deadline established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, therefore, the Court cannot consider the merits of the case namely the Applicant's allegations of constitutional violation.

45. Accordingly, the Referral is to be declared inadmissible as out of time.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 asnd 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 11 September 2019, 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;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani Arta Rama-Hajrizi

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