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

Prishtina, on 5 December 2019
Ref. No.:RK 1474/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI126/19

Applicant

Lon Paluca

Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev. no. 67/2019, of 20 March 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, 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 Lon Paluca, from Trepetnica village, Prizren municipality (hereinafter: the Applicant), who is represented by Lawyers Gafurr Elshani and Sahit Bibaj, from Prishtina.

Challenged decision

2. The Applicant challenges the Resolution of the Supreme Court of Kosovo, [Rev. no. 67/2019] (hereinafter: the Supreme Court) of 20 March 2019.

3. The Applicant has received the challenged decision on 5 April 2019.

Subject Matter

4. The subject matter of the Referral is to examine the constitutionality of the challenged Resolution which has allegedly violated Applicant's rights guaranteed by Articles 3 and 24 [Equality before the Law] 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 [Right to a Fair Trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 10 of the Universal Declaration of Human Rights (hereinafter: the Universal Declaration).

5. At the same time, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure ordering *"PROHIBITION OF EXECUTION OF DECISIONS of the Court of Appeal of Kosovo CN.nr. 659/15 of 21.12.2018 and the decision of the Supreme Court of Kosovo Rev. no. 67/2019 dated 20 March 2019 until the final decision of the Constitutional Court"*.

Legal basis

6. The Referral is based on paragraph 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 30 July 2019, the Applicant submitted the Referral to the Court.

8. On 31 July 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges Arta Rama-Hajrizi (Presiding), Selvete Gerxhaliu-Krasniqi and Bajram Ljatifi.

9. On 20 August 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

10. On 13 November 2019, the Review Panel having considered the report of the Judge Rapporteur unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. The Applicant filed a second Referral with the Court in relation to his case, challenging various decisions of the regular courts.

12. The Court will in the following present the factual situation conducted in each of the two cases, both with regard to Referral KI116/10, and in relation to Referral KI126/19 which is as follows:

Summary of facts regarding Referral KI116/10

13. On 14 January 1975, the Applicant had purchased immovable property in the Municipality of Klina, and had certified the sale contract in court.

14. On 18 January 1977, the Municipal Assembly of Klina, Directorate of Economics, Municipal Affairs and Property Legal Issues by Decision [No. 04-465/15/2] expropriated the Applicant of his property right, Decision with which the Applicant agreed, seeking as compensation a similar property. The Applicant initiated court compensation proceedings but no final court decision had been rendered.

15. After 1999, the Applicant attempted to secure the case file and to continue the court proceedings, but the Municipal Court of Klina informed the Applicant that his case files were not in court.

16. The Applicant filed a claim for compensation with the Municipal Court of Klina.

17. On 16 October 2003, the Municipal Court of Klina through Resolution [C. no. 54/2001] approved the claim, obliging the Municipality of Klina in relation to the expropriated property to allow the claimant permanent use of premises of the same size as the property that had been expropriated. The Municipality of Klina filed an appeal with the District Court against the aforementioned Resolution.

18. On 8 May 2007, the District Court in Peja through Judgment [AC.nr.233/04] annulled the aforementioned Resolution, finding that the Applicant did not file a compensation appeal until 2001, and therefore the statute of limitations on the Applicant's appeal had run out. The Applicant filed a request for revision with the Supreme Court.

19. On 6 May 2010, the Supreme Court through Resolution [Rev. no. 286/2007] rejected the Applicant's appeal as ungrounded and upheld the District Court Decision.

20. On 23 May 2011, the Constitutional Court rendered the Resolution on Inadmissibility in Case No. KI116/10, declaring the Applicant's Referral as manifestly ill-founded.

Summary of facts regarding Referral KI126/19, related to the proposal for reopening of proceedings

21. On 31 May 2013, the Applicant filed a Referral with the Basic Court in Peja-Branch in Klina (hereinafter: the Basic Court) for the reopening of the contested procedure, claiming, inter alia, that new facts were available on the basis of which they could result in a favourable decision for the Applicant. The Applicant alleges that these facts could not have been ascertained earlier (former Judge Z. R.'s statement of the Municipal Court in Klina, under oath, who remembers that the Applicant's case for compensation was remitted to the Court before 1999, and for which there was no merit decision rendered). The Applicant alleges that as a result of this fact, the statute of limitations had not expired.

22. On 11 September 2014, the Basic Court, by Decision [C. no. 54/2001] allowed the repetition of proceedings completed by the final judgment of the Municipal Court [C. no. 54/2001] of 16 October 2003, cancelling the same. The Basic Court bases its reasoning on the fact that the Applicant could not earlier submit such evidence which he considers relevant to his case and pursuant to Article 421, paragraph 9 of the Law on Contested Procedure, the Basic Court allows the procedure to be repeated.

23. On an unspecified date, the Municipality of Klina appealed to the Court of Appeal against Decision [C. no. 54/2001] of the Basic Court, alleging substantial violations of the provisions of contested procedure, erroneous determination of factual situation and erroneous application of substantive law.

24. On 21 December 2018, the Court of Appeals of Kosovo, by Decision [CN. no. 659/2015] dismisses the Applicant's motion for reopening of the proceedings as out of time and thereby amends Decision [C. no. 54/2001] of the Basic Court of 11 September 2014. Further, the reasoning states:

> *"In the case of the motion to allow the Claimant to reopen the proceedings, it was exercised after the expiry of the five-year objective time limit provided by the statutory provision of Article 234.3, whereby the Court of Appeal reversed the appealed resolution* [...] *notwithstanding that in the present case the Claimant appears to have exercised the motion to repeat the proceedings within a subjective time limit of 30 days, counting from the day on which the same person became aware of new evidence and submitted them to the court, according to the statutory provision provided for in Article 234.1 item g) of LCP, in the present case, the Court of Appeals holds that the subjective time-limit for submitting a motion to reopen the proceedings cannot be applied, as the subjective time-limit could only be assessed in case the Claimant's motion for reopening of the proceedings would have been filed within the objective time limit of 5 years, counting from the date when the judgment of the Municipal Court C.no.54/2001 dated 16.10.2003 had become final".*

25. On 29 January 2019, the Applicant filed a revision with the Supreme Court against Decision [CN. no. 659/2015] of the Court of Appeal of 21 December 2018, alleging erroneous application of substantive law.

26. On 20 March 2019, the Supreme Court of Kosovo, through Resolution [Rev 67/2019], rejected the revision as ungrounded, fully upholding the Court of Appeal's legal position.

Applicant's allegations

27. The Applicant alleges that with the challenged decision, the Supreme Court has violated his right protected by Article 31 [Right to Fair and Impartial Trial] of the Constitution and in conjunction with Article 6 [Right to a Fair Trial] of the ECHR and reasoned the violation of rights: *"The parties to the proceedings were not treated equally, and that the court did not examine the evidence and facts provided by the complainant, and more so as cited in the legal remedies by the appellant on the submission of the motion to the Court, which was proved by the minutes of the respondent, but also by the submission that after the parties had not reached an agreement for compensation in the administrative procedure, the case was remanded to the court, on this basis the statutory limitation period on the occasion of the case being referred to the Court cease (Article 388 former LCP that was in force)".*

28. Further, the Applicant alleges that *"the proceedings before the Courts were not fair in their entirety, including the evidence".* The Applicant in his Referral refers to the case of Court KI49/11, Applicant *Ibrahim Sokoli*, Resolution on Inadmissibility of 5 December 2012 and the case of ECHR, *Edwards v. United Kingdom*, Judgment of 10 July 2009.

29. The Applicant also alleges that with the challenged decision, the Supreme Court had violated his rights guaranteed by Articles 3 and 24 [Equality before the Law], and 46 [Protection of Property] of the Constitution and Article 10 of the Universal Declaration, but in no way justifies them.

30. With regard to the request for interim measures, the Applicant requests the Court to stay the execution of the decisions of the Court of Appeal and the Supreme Court, pending a decision by the Court.

31. Finally, the Applicant requests that the aforementioned decisions be annulled and the case remanded for retrial to the Basic Court.

Relevant Legal Provisions

LAW NO. 03/L-006 ON CONTESTED PROCEDURE

REPEATING PROCEDURES

Article 232

Finalized procedure with an absolute decree can be repeated based on the proposal of party:

a) if the party with an illegal act, especially in the case of not being invited to the session, the party is not given the opportunity to part take in the examination of the main issue;

b) if in the final procedure, as a charging party or unknowingly participated the individual that can't act as an intermediate party; the legal entity wasn't represented by an authorized person, when the party without legal background wasn't represented by its legal representative, when the legal representative or by proxy of the side had no required authorization for pursuing the issue at the court or for conducting concrete procedural actions respectively when pursuing the case at the court or conducting concrete procedural actions was not approved by the side later on;

[...]

g) if the party is aware of other facts or finds new proofs, or gains the opportunity to get a more favourable verdict if these facts and proofs were used in the earlier procedure.

Article 234

234.1 Proposal for repeating the procedure is presented within the period of thirty (30) days and that:

a) in the case of article 232, point a) of this law, from the day when the verdict of absolute decree was handed to the party;

b) in the case of article 232, point b) of this law if as a charging party or unknowingly participated the individual that can't act as an intermediate legal party-from the day the verdict was handed to the persons;

[...]

234.3 After a five-year deadline passed from the day when the verdict became absolute, the proposal for repeating the procedure can be presented, except the repetition is required from the causes mentioned in article 232, point a) and b), of this law.

Admissibility of the Referral

32. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

33. The Court recalls that the Applicant has submitted two Referrals to the Constitutional Court. The first Referral, related to the Applicant's contested procedure, was declared by the Court as manifestly ill-founded by Resolution on Inadmissibility in Case KI116/10.

34. In the present Referral KI126/19, the Applicant challenges before the Court the decisions of the regular courts related to his motion for the reopening of the proceedings which ended with the Supreme Court Decision [Rev 67/2019] of 20 March 2019. Accordingly, the Court will confine itself to assessing the decisions of the regular courts relating to the reopening of proceedings, as this is the subject of Referral KI126/19.

35. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

> *"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".*

36. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, 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".*
>
> 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... ."*

37. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party, challenging an act of a public authority, respectively Resolution [Rev. no. 67/2019] of 20 March 2019, of the Supreme Court, after having exhausted all legal remedies provided by Law. The Applicant has also clarified the rights and freedoms he claims he has been violated by the challenged decision in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.

38. In addition, the Court examines whether the Applicants have fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. In this regard, the Court refers to paragraph 3 (b) of Rule 39 [Admissibility Criteria] of the Rules of Procedure, which provides:

> *"(3) The Court may also consider a referral inadmissible if any of the following conditions are present:*
> *[...]*
> *(b) the Referral is incompatible ratione materiae with the Constitution;*
> *[...]".*

39. The Court also reiterates that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

40. As to the Applicant's allegation of a violation of his right to a fair and impartial trial, the Court, referring to the case law of the ECtHR and its case law, reiterates that Article 31 of the Constitution and Article 6 of the ECHR does not apply to requests to reopen or repeat proceedings (See, analogously, the Constitutional Court cases: KI80/15, KI81/15 and KI82/15, Applicant *Rrahim Hoxha*, Resolution on Inadmissibility of 6 December 2016, paragraph 31; see also ECtHR cases, *inter alia, Oberschlick v. Austria,* no. 23727/94, Resolution on Inadmissibility of 21 March 1994, *Dowsett v United Kingdom,* no. 8559/08, Resolution on Inadmissibility of 4 January 2011, *Sablon v. Belgium,* no. 36445/97, Judgment of 10 April 2001, paragraph 86).

41. Therefore, the Court considers that Article 31 [Right to a Fair and Impartial Trial] of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR, does not apply to the Applicant's motion for reopening of the proceedings (See the Constitutional Court case: KI80/15, 81/15 and 82/15, *Rrahim Hoxha,* Resolution on Inadmissibility of 27 December 2016, paragraph 32).

42. The Court notes that the *ratione materiae* compatibility of the Referral with the Constitution stems from the Court's substantive jurisdiction. The right to which the Applicant relies must be protected by the Constitution so that a constitutional complaint is *ratione materiae* compliant with the Constitution. However, the Constitution does not guarantee the Applicant the right to review and repeat the proceedings (See, analogously, the Constitutional Court cases: KI80/15, 81/15 and 82/15, *Rrahim Hoxha,* Resolution on Inadmissibility of 27

December 2016, paragraph 33, KI07/17/15, *Pashk Mirashi*, Resolution on Inadmissibility of 12 June 2017, paragraph 66; KI 40/19, *Alije Shabani, Lulezim Shabani, Luljeta Shabani and Kujtim Shabani*, Resolution on Inadmissibility of 11 September 2019, paragraph 41).

43. Consequently, the Court considers that the Applicant's request concerning the refusal by the regular courts to reopen the proceedings is not *ratione materiae* pursuant to Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

44. As to the Applicant's allegation that with the challenged decision, the Supreme Court has violated his rights guaranteed by Articles 3 and 24 [Equality before the Law], and 46 [Protection of Property] of the Constitution and Article 10 of the Universal Declaration, the Court recalls that the Applicant did not justify these violations in any way but merely stated explicitly the articles in question.

45. The Court assumes that the Applicant considers that the violation of these rights resulted from the violation of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, which the Applicant has justified.

46. Given that in the present case Article 31 of the Constitution and Article 6 of the ECHR do not apply to the motion to repeat the proceedings, the Court will not assess the alleged violations of Articles 3 and 24 [Equality before the Law], and 46 [Protection of Property] as well as Article 10 of the Universal Declaration, because the Applicant did not justify them.

47. For these reasons, the Court further considers that the Applicant's Referral did not meet the procedural requirements for admissibility as set out in the Constitution and as further provided by the Law and the Rules of Procedure, therefore, it must be declared inadmissible.

Assessment of request for interim measure

48. The Court notes that the Applicant requests the Court to impose an interim measure by suspending the Decision of the Supreme Court, [Rev. no. 67/2019], of 20 March 2019, and Resolution [CN. no. 659/2015] of the Court of Appeal of Kosovo, of 21 December 2018, pending final decision by the Court.

49. In order to approve the interim measure, in accordance with Rule 57 (5) of the Rules of Procedure, the Court must find that:

> *"(5) If the party requesting interim measures has not made this necessary showing, the Court shall deny the request for interim measures".*

50. As previously concluded, the Applicant's request regarding the refusal by the regular courts to repeat the proceedings is not *ratione materiae* pursuant to Article 31 of the Constitution, and therefore the Applicant's request for interim measures must also be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and in accordance with Rules 39 (3) (b) and 57 (5) of the Rules of Procedure, on 13 November 2019, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measures;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Radomir Laban Arta Rama-Hajrizi

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