



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

Prishtina, on 29 November 2019
Ref. no.:RK 1467/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI129/19

Applicant

Ramadan Koçinaj

**Constitutional review of Judgment Rev. No. 78/2019 of the Supreme
Court of Kosovo, 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 Ramadan Koçinaj, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. No. 78/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 20 March 2019, which rejected as ungrounded his revision against Judgment Ac. No. 3192/2016 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) of 15 November 2018. The challenged Judgment was served on the Applicant on 10 April 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights, guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicant also requests that his identity be not publicly disclosed.

Legal basis

5. 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 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

6. On 16 August 2019, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral, which he submitted by mail service on 10 August 2019.
7. On 20 August 2019, the Applicant submitted to the Court the same Referral which the Court received on 16 August 2019, with additional clarifications and documents.
8. On the same date, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
9. On 28 August 2019, the Court notified the Applicant and the Supreme Court about the registration of the Referral.
10. On the same date, the Court requested the Basic Court in Prishtina (hereinafter: the Basic Court) to submit an acknowledgment of receipt proving the date when the Applicant was served with the challenged decision.
11. On 30 August 2019, the Court received the requested acknowledgment of receipt from the Basic Court.

12. On 18 September 2019, the Applicant submitted to the Court a document "Request for urgent review" requesting regarding the case KI129/19, "a genuine legal, fair, impartial and timely review of the case".
13. On 7 November 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

14. The dispute for which the Applicant has filed a Referral with the Court relates to the debt billed by the Kosovo Energy Corporation (hereinafter: KEK) for the apartment located in the Sunny Hill neighborhood in Prishtina, with a surface area of 37 square meters (hereinafter: the apartment), which the Applicant purchased in 2009 from the A. P.
15. Until 25 July 2005, the electrical meter in the apartment was registered in the name of B. Z., who used the apartment until then.
16. On 25 July 2005, KEK signed a contract for electricity services with customer S. XH. F. with code DPR-90033092 and meter number 11727231.
17. On 7 March 2006, KEK placed in the apartment the new meter no. 202278, as the old meter was not introduced.
18. On 21 July 2009, the Applicant purchased the apartment from A.P.
19. On 4 August 2009, the Applicant entered into a contract on rent with N. B., and on the occasion of the conclusion of the contract received from N. B. a certain amount of money, in advance.
20. On 17 November 2009, KEK placed in the apartment the new meter no. 92344752, as the old meter was not introduced.
21. On 2 December 2009, the Applicant filed a request with KEK for repayment of debt accumulated by the former users of the apartment, for the electricity meter on behalf of S. XH. F., as he held that he was not responsible to pay that debt.
22. On 23 May 2011, the Applicant entered into a contract with A. R. for the sale of the house with cadastral parcel P-71914059-06725-0, in the Cadastral Zone Prishtina (hereinafter: the house), for a specified amount of money.
23. On 11 November 2011, the Applicant entered into a contract with S.K for the sale of the apartment, for a specified amount of money.
24. On 20 August 2012, the KEK Department for Consumers rejected the Applicant's request for debt repayment accumulated by previous occupants of the apartment.

25. On 4 July 2012, the Applicant filed a complaint to the response of the KEK Department for Consumers with the Consumer Protection Department of the Energy Regulatory Office (hereinafter: ERO).
26. On 27 August 2012, the ERO, by Decision ZRRE/DMK_V_847_08_12, approved the Applicant's appeal regarding the debt dispute until July 2009, obliging KEK to seek the accumulated debt until 19 January 2005 through the competent court from B.K., while the debt accumulated from 25 July 2005 until July 2009, through the competent Court from S. XH. F.
27. On an unspecified date, the Applicant filed a lawsuit against KEK with the Basic Court seeking compensation for pecuniary and non-pecuniary damage (lost profit for sale below the real price of the apartment and house; non-realization of the rent for apartment; compensation for reduced living activity). The Applicant alleged that as a result of KEK failure to supply – disconnection of electrical energy and keeping the Applicant under pressure for debt incurred by other persons, prior to July 2009, upheld by the abovementioned ERO decision, KEK caused him the abovementioned damage for which he sought compensation.
28. On 7 April 2016, the Basic Court, by Judgment C. No. 2437/12 rejected as ungrounded the Applicant's claim, reasoning, *inter alia*, that in 2009 the apartment was being supplied with electricity, but KEK had cut off electricity to the apartment due to unpaid debts by the Applicant for the time after July 2009, when he occupied the apartment.
29. The Applicant filed appeal against the Judgment of the Basic Court [C. No. 2437/12], with the Court of Appeals, on the grounds of essential violation of the provisions of contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law.
30. On 15 November 2018, the Court of Appeals, by Judgment AC. No. 3192/2016, rejected the Applicant's appeal and upheld the Judgment of the Basic Court [C. No. 2437/12].
31. The Applicant filed a revision with the Supreme Court against the Judgment of the Court of Appeals [AC. No. 3192/2016], on the grounds of violation of the provisions of contested procedure and erroneous application of substantive law.
32. On 20 March 2019, the Supreme Court, by Judgment Rev. No. 78/2019, rejected as ungrounded the Applicant's revision against the Judgment of the Court of Appeals [AC. No. 3192/2016].

Applicant's allegations

33. The Applicant alleges that by the challenged decision, the Supreme Court violated his rights guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law] and 31 [Right to Fair and Fair and Impartial Trial] of the Constitution.

34. The Applicant alleges that KEK, despite the evidence presented by him, did not repay the prior debt that existed prior to purchase of the apartment by him in 2009; did not register the electricity meter in his name despite the ERO decision in his favor until the case went to the Basic Court and KEK kept his apartment disconnected from the electricity network despite the fact that the debt for which he was charged with, was not his debt.
35. As a consequence of these violations, the Applicant states that he was obliged to terminate the contract on rent of the apartment and to sell his apartment and house under a real market price, thereby causing him irreparable pecuniary and non-pecuniary damage.
36. In this regard, the Applicant alleges that the regular courts did not correctly assess the evidence related to determination of facts that KEK violated its internal rules when issuing a decision 3 (three) years after the complaint was filed, although it was obliged to issue a decision within 3 (three) months; ignored the issue of KEK refusal to register the electricity meter in 2009, and failed to assess the evidence proving that the Applicant was disconnected from the electricity network as a result of the debt of other persons for which debt he was not responsible, as evidenced by the ERO Decision in his favor. He alleges he has not been connected to the electricity network since 2009, when he bought the apartment, and KEK invoices from which the regular courts have established that he was connected to the network since 2009, are lump sum invoices and do not prove the consumption of electricity by him.
37. The Applicant also states that the regular courts did not take into account the expertise of the expert, which proves that due to the unlawful disconnection from the electricity network for the debt of other persons, the Applicant sold the apartment and house under the real price and had to terminate the rental contract of the apartment which provided him a certain amount of money each month. He also complains that the testimonies of witnesses V. G. and P. M. have been “silenced” by the courts although they establish the fact that the electricity meter that existed in 2009 was confiscated by KEK. He complains that despite these violations, the regular courts “*have constantly lined up behind KEK, adding terror to me and my family*”.
38. The Applicant also complains about the costs of the proceedings, stating that he has “*also requested the costs of the proceedings which should have been recognized and accepted*” by the regular courts, but this request was rejected.
39. The Applicant further alleges violations of Articles 23 [Human Dignity] and 24 [Equality Before the Law], stating that “*[...] KEK has violated my dignity by abusing its monopoly in relation to the consumer. Unlawfully, brutally during 2009, 2010, 2011 I was disconnected from electricity network and seeking a debt that was not mine for three years left me without power supply, causing me irreparable damage*”.
40. Regarding the allegation of violation of the right to equality before the law, he states that the regular courts “*treated me unequally in relation to KEK because they violated undisputed evidence and facts in the trial [...] judges at three*

instances of the judiciary probably suffer from the logic that they are protecting a public company”.

41. The Applicant requests that his identity be not disclosed, justifying that he requests *“to protect the privacy of my two children for whom I am submitting medical reports. I do not want at this stage to disclose the violation of dignity and integrity that I have experienced because of my very young children and I do not want them to be hurt”.*
42. Finally, the Applicant requests the Court to *“recognize my statement of claim as correct”* and to declare invalid the judgments of the Basic Court, the Court of Appeals and the Supreme Court.

Admissibility of the Referral

43. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
44. 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.”

45. The Court further examines whether the Applicant fulfilled the admissibility requirements as provided by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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 [...].”

46. As regards the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; has exhausted available legal remedies; has clarified the act of the public authority, which constitutionality he challenges and the constitutional rights which he claims to have been violated, and submitted the referral on time.
47. In addition, the Court also has to examine whether the Applicant has fulfilled the admissibility requirements laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure stipulates that:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”
48. In this regard, the Court recalls that the Applicant alleges a violation of his constitutional rights, namely the right to fair and impartial trial (Article 31), the right to protection of human dignity (Article 23) and the right to equality before the law (Article 24).
49. The Court notes that, in respect of the alleged violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, the Applicant alleges that the regular courts did not properly address the allegations made by him, as they failed to correctly assess the evidence presented and the testimonies of witnesses and experts regarding the liability for damages caused to the Applicant by the unlawful request of KEK to pay the debt of the former occupants of the apartment; unlawful non-supply or disconnection from the power network of the Applicant's apartment for the debt of the previous occupants of the apartment, thereby causing him pecuniary and non-pecuniary damage, forcing him to terminate his contract on rent, as well as to sell his apartment and house under a real price.
50. With regard to these allegations, the Court recalls the reasoning of the Basic Court, of Judgment C. No. 2437/12 that:

“From the list of invoices of the supply of consumed energy, it results that from 17.11.2009 until May 2011, the metering point in the [Applicant's]

apartment was supplied with electrical energy as evidenced by this power supply statement.

[...]

The Court found that [the Applicant] did not pay his energy bills during the period he was in possession and use of his apartment, namely from 19.08.2009 until 19.06.2011, although he was supplied with electricity, in the statement - consumer transactions it is noticed that no payment was made. The court found that the customer [...] was disconnected several times [from KEK] for non-payment of the debt originally accumulated by the predecessors - previous occupants of the apartment, but after the abovementioned date, he was also disconnected for non-payment when he was the owner and occupant of the apartment.

The Court found that [KEK] rightly and under Article 6.1, 16.1 sub item 1.1. and Article 19 of the Rule on Disconnection and Reconnection of Customers in the Electricity Sector in Kosovo, it has disconnected [the Applicant's] supply point as [he] has not complied with the payment-dynamics-rule under the said Regulation.

The Court rejected [the Applicant's] allegations of alleged damage caused by [KEK] as a result of which damage [the Applicant] was forced to sell the apartment below the market value, as well as to terminate the contract for renting the house [...] and sell the house [...] under the market price [...]. The Court did not approve the abovementioned allegation [...], as it considers that there is no causal link between the actions taken by [KEK] and the actions of [the Applicant] for the sale of the apartment, house and termination of the lease [...].

[...]

[The Applicant] failed to convince the court that there was a causal link between the [KEK] actions and the damage caused in the form of lost profit as well as the non-pecuniary damage alleged because he did not provide any material evidence that would substantiate these claims relating to non-pecuniary damage (reduce of the claimant's life ability, infringement of authority and violation of human rights".

51. In addition, the Court of Appeal fully upheld the factual findings and the legal position of the Basic Court, holding that it has correctly determined the factual situation and correctly applied the substantive law when it found that the Applicant's statement of claim was ungrounded.
52. Finally, the Supreme Court, in Judgment 78/2019, held:

"The submissions in the revision that: the judgment of the second instance court was rendered with essential violation of the rules of contested procedure under the provision of Article 194 of the [Law on Contested Procedure] LCP, essential violation of the rules of procedure in relation to the disregard of the appeal of the claimant and the failure to comply with the obligation that the court fully establishes all the facts with influence on fair adjudication of the decisive facts, [the Supreme Court] assessed and found them inadmissible, as the second instance court in the reasoning of the judgment assessed all appealing allegations and provided sufficient reasons for the facts relevant to fair adjudication of this legal matter."

53. The Court notes that the regular courts assessed the facts and interpreted and applied the procedural and substantive provisions regarding the Applicant's Referral. Their conclusions were reached after a detailed examination of all the arguments presented by the Applicant and the respondent.
54. The Court further notes that the Applicant reiterates before the Court the same arguments he had presented in the proceedings before the regular courts, in particular as to the determination of factual situation and the legality of the decisions of the regular courts.
55. In this regard, the Court reiterates that it is not the role of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, the case of the European Court of Human Rights (hereinafter: ECtHR), *Garcia Ruiz v. Spain*, no. 30544/96, paragraph 28).
56. The role of the Constitutional Court is only to ensure respect for the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as "a fourth-instance court" (see, *mutatis mutandis*, case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
57. The Court further notes that the Applicant is not satisfied with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim for the violation of the constitutional right to fair and impartial trial. (See, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 42).
58. The Constitutional Court can only examine whether the evidence has been correctly presented and whether the proceedings in general, viewed in their entirety, have been held in such a way that the Applicant has had a fair trial (see, *inter alia*, case *Edwards v. the United Kingdom*, no. 13071/87, Report of the European Commission on Human Rights, adopted on 10 July 1991).
59. In this regard, the Court considers that the reasoning given by the regular courts, when referring to the Applicant's allegations of a violation of procedural and substantive law, is clear and sufficient and the proceedings before the regular courts were not in any way unfair or arbitrary (see, *mutatis mutandis*, ECtHR case, *Shub v Lithuania*, no. 17064/06, Decision of 30 June 2009).
60. The Court recalls that the Applicant also alleges that the regular courts violated his right to equality before the law guaranteed by Article 24 of the Constitution and the human dignity guaranteed by Article 23 of the Constitution.

61. As to the right to equality before the law, the Court recalls that treatment is discriminatory if the individual is treated differently in relation to others in identical or similar positions or situations, and if that difference in treatment does not have an objective and reasonable justification.
62. The Court also reiterates that the different treatment must pursue a legitimate aim to be justified and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see ECHR case, *Marckx v. Belgium*, Application no. 6833/74, Judgment of 13 June 1979, paragraph 33).
63. The Court considers that the Applicant did not present any *prima facie* evidence, and did not substantiate his allegation, which indicates that he was discriminated against in the proceedings before the regular courts.
64. Also, with regard to the human dignity protected by Article 23 of the Constitution, the Applicant, besides stating that "*KEK has violated my dignity by abusing its monopoly in relation to its customers*", he did not present any evidence nor substantiate the claim.
65. In sum, the Court considers that the Applicant did not present facts showing that the proceedings before the regular courts have in any way caused a constitutional violation of his rights to fair and impartial trial, human dignity, and equality before the law.
66. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 39 (2) of the Rules of Procedure.

Request for non-disclosure of identity

67. The Court recalls that the Applicant requested that his identity be not publicly disclosed, requesting "*to protect the privacy of my two children for whom I am submitting medical reports. I do not want at this stage to disclose the violation of dignity and integrity that I have experienced, because of my very young children and I do not want them to be hurt*".
68. In this respect, the Court refers Rule 32 (6) of the Rules of Procedure, which provides:

"Parties to a referral who do not wish their identity to be disclosed to the public shall so indicate and shall state the reasons justifying such a departure from the rule of public access to information in the proceedings before the Court. [...]."
69. However, the Court notes that the Applicant has not shown and presented sufficient evidence to justify his request for non-disclosure of his identity and, consequently, this Applicant's request is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and pursuant to Rules 32 (6) and 39 (2) of the Rules of Procedure, on 7 November 2019, unanimously

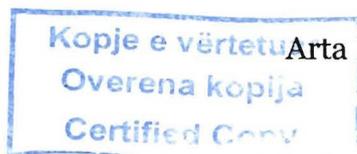
DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for non-disclosure of identity;
- 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

Bekim Sejdiu



Arta Rama-Hajrizi

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