



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

Prishtina, on 21 February 2018
Ref. no.: RK 1201/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI127/17

Applicant

Hetem Sejdia

**Constitutional review of Decision Rev. No. 388/2016 of the Supreme
Court of Kosovo of 20 March 2017**

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 Hetem Sejdia (hereinafter: the Applicant), residing in village Runik, Municipality of Skenderaj.

Challenged decision

2. The Applicant challenges Decision Rev. No. 388/2016 of the Supreme Court of Kosovo, of 20 March 2017, which was served on him on 28 June 2017.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal basis

4. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing of the 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 27 October 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 November 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 7 November 2017, the Court notified the Applicant about the registration of the Referral and notified the Supreme Court about the registration of the Referral. The Court also sent a request to the Basic Court in Mitrovica - Branch in Skenderaj to present the date when the challenged decision of the Supreme Court was served on the Applicant.
8. On 13 November 2017, the Basic Court in Mitrovica - Branch in Skenderaj submitted an acknowledgment of receipt to the Court indicating that the Applicant was served with the challenged decision on 28 June 2017.
9. On 11 January 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

10. On 5 April 2011, the Applicant filed a claim with the Basic Court in Mitrovica - Branch in Skenderaj (hereinafter: the Basic Court) against the Government of the Republic of Serbia for compensation of material and non-material damages caused to him between 1998 and 1999.
11. On 27 September 2013, the Basic Court by its Decision (C. No. 144/2011) rejected the Applicant's claim and declared itself incompetent to decide on this legal matter.
12. The Applicant filed an appeal against the Decision of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) on the grounds of essential violations of the provisions of the contested procedure, claiming that some of the provisions of the contested procedure were not taken into account and were not applied by the first instance court. The Applicant requested that the Decision of the Basic Court be annulled and his request be declared admissible.
13. On 16 September 2015, the Court of Appeals by Decision (Ac. No. 1311/2014) rejected the Applicant's appeal and upheld the Decision of the Basic Court.
14. The Applicant filed a request for revision with the Supreme Court on the grounds of essential violation of the provisions of the contested procedure. He requested that his revision be approved, the Decision of the Court of Appeals and of the Basic Court be annulled and the case be remanded for reconsideration and retrial by the Basic Court.
15. On 20 March 2017, the Supreme Court, by Decision (Rev. No. 388/2016), rejected the Applicant's revision as ungrounded. The Supreme Court in its decision reasoned that in this specific case it is about a legal-property contest in a foreign country and that the provisions of international law apply, and for such contests the local court is not competent to decide.
16. The Supreme Court further reasoned that the provisions of Article 28 of the LCP cannot apply because the Applicant's case does not concern foreign natural or legal persons but has to do with a foreign country with which the state of Kosovo, on whose territory the damage was caused, has no international agreement regarding the jurisdiction of the local courts for these types of disputes.

Applicant's allegations

17. The Applicant alleges that the decisions of the Supreme Court have violated his rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial) of the ECHR and Article 15 of the UDHR.
18. The Applicant claims that the regular courts "*have erroneously applied the applicable law referring to the territorial jurisdiction of the Basic Court [...]*,

because the court territorially competent for the adjudication of legal matters is always the court in the territory of which the crime was committed, moral and material damage! "This legal definition and legal position also coincides with the interest of the injured party, the principle of economy in the court and administrative proceedings, and in accordance with the international principle - per loci".

19. The Applicant further states that he was not *"given the opportunity that the latter is dealt with in the legal procedure, according to the applicable law of Kosovo [...] and the best judicial practices of the region."*
20. The Applicant, referring to Article 21, paragraph 2 of the Constitution, alleges that the regular courts *"did not apply advanced international human rights standards. One of the standards is to give the injured party the opportunity to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities"*.
21. The Applicant, referring to Article 54 of the Constitution, also states that *"the right to judicial protection of rights, the right of access to justice at national level and the institutional guarantees for the protection of human rights were denied"*.
22. The Applicant refers to examples that allowed Second World War victims *"to file individual claims at local courts for compensation for damage caused by Germany"*. In this regard, he specifies that in the cases of Greece, Italy and the United States of America, the individuals were afforded a possibility to claim compensation for *"the damage caused by Germany during World War II in accordance with the international principle 'per loci'"*.
23. Finally, the Applicant requests the Court to annul the decisions of the regular courts and to *"request the Basic Court in Mitrovica- Branch in Skenderaj to reprocess and adjudicate in accordance with the applicable law and good court practices the legal remedy of moral and material damage [...]"*.

Admissibility of the Referral

24. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
25. 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"*.
26. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

“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”.

27. The Court considers that the Applicant is an authorized party, who challenges the act of a public authority after exhausting the legal remedies available and filed the Referral within the 4 (four) month deadline as foreseen by the Law.

28. However, the Court refers to Article 48 [Accuracy of the Referral] of the Law, which provides that:

“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.”

29. In addition, the Court also refers to paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which stipulate:

“(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.”

30. The Court recalls that the Applicant alleges that the regular courts violated his rights protected by the Constitution, the ECHR and the UDHR, mainly the rights pertaining to the right to fair and impartial trial and judicial protection of rights.

31. In this regard, the Court notes that the Applicant claims that the regular courts erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court, alleging that the court in territory of which the damage was caused is the competent court to adjudicate his legal matter.

32. The Court considers that the Applicant’s allegations in essence relate to the interpretation given by the regular courts of the procedural provisions regarding their territorial jurisdiction and competence to deal with the Applicant’s Referral.

33. The Court emphasizes that it is not its task to deal with errors of fact or law allegedly committed by regular courts when assessing evidence or applying the law (legality), unless and insofar as they may have violated the rights and the freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law (See, *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 28).

34. The complete determination of factual situation is within the full jurisdiction of the regular courts (matter of legality). Therefore, the Court cannot act as “*fourth instance court*” (see ECtHR case of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, para. 65; see also, *mutatis mutandis*, case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
35. The Court notes that the Supreme Court assessed the interpretation of the Court of Appeals and the Basic Court of the procedural provisions regarding their competence to resolve the Applicant's Referral.
36. The Supreme Court, when reviewing the Applicant's allegations reasoned that the Basic Court and the Court of Appeals correctly applied the provisions of Article 18, paragraph 3 and Article 39, paragraphs 1 and 2 of the Law on Contested Procedure when they stated that they did not have jurisdiction over these legal matters. Therefore, the Supreme Court dismissed the Applicant's claims, because general territorial jurisdiction is with the court on whose territory is the seat of the Assembly of the Republic of Serbia and that is not located in the territory of the Kosovo courts.
37. The Supreme Court further specified that in the case of the Applicant: “*we are dealing with a foreign state, with which until now the state of Kosovo in the territory of which the damage was caused, has not concluded any international agreement (bilateral etc.) on the jurisdiction of local courts for these type of disputes*”.
38. The Court considers that the conclusions of the Basic Court, the Court of Appeals and the Supreme Court were reached after a detailed examination of all the arguments presented by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the proceedings the arguments and evidence he considers relevant to his case.
39. All the arguments of the Applicant, which were relevant to the resolution of the dispute, had been properly heard and reviewed by the courts. All the material and legal reasons related to the challenged decisions were presented in detail by the Applicant and the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair (see, *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paras. 29 and 30).
40. The mere fact that the Applicant is not satisfied with the outcome of the decisions of the Supreme Court, or the mentioning of articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must provide reasoned allegations and compelling arguments (See, *mutatis mutandis*, the case of Constitutional Court KI136/14, *Abdullah Bajqinca* Resolution on Inadmissibility of 10 February 2015, paragraph 33).
41. Furthermore, the Court notes that the submitted facts and allegations of the Applicants are identical to several referrals which were declared inadmissible by the Court (see Constitutional Court Case KI73/17, KI78/17 and KI85/17,

Istref Rexhepi and 28 others, Resolution on Inadmissibility of 30 November 2017).

42. In sum, the Court considers that the Applicant has not presented evidence, facts and arguments showing that the proceedings before the regular courts have in any way presented a constitutional violation of his rights guaranteed by the Constitution, namely Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 of the ECHR or Article 15 of the UDHR.
43. 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; and

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and (2) (b) (d) of the Rules of Procedure, in the session held on 11 January 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;
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi