



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

Prishtina, on 6 February 2018
Ref. no.: RK 1194/18

RESOLUTION ON INADMISSIBILITY

in

Cases No. KI97/17, KI99/17, KI 115/17 and KI121/17

Applicants

Mala Mala
Ali Salihu
Nurije Beka
Xhevat Xhinovci

**Constitutional review of four (4) decisions 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. Referral KI97/17 was submitted by Mala Mala; Referral KI99/17 was submitted by Ali Salihu; Referral KI115/17 was submitted by Nurije Beka; and Referral KI121/17 was submitted by Xhevat Xhinovci (hereinafter: the Applicants). All Applicants reside in the Municipality of Skenderaj.

Challenged decision

2. The Applicants challenge four (4) decisions of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) as follows:
 1. Mala Mala – Decision Rev. No. 393/2016 of 20 March 2017, which was served on him on 27 June 2017;
 2. Ali Salihu - Decision Rev. No. 415/2016 of 20 March 2017, which was served on him on 17 August 2017;
 3. Nurije Beka - Decision Rev. No. 413/2016 of 20 March 2017, which was served on him on 25 August 2017;
 4. Xhevat Xhinovci - Decision Rev. No. 423/2016 of 20 March 2017, which was served on him on 26 August 2017;

Subject matter

3. The subject matter of the Referrals is the constitutional review of the challenged decisions which allegedly violated the Applicants 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 on the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal basis

4. The Referrals are 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 Court

5. On 18 August 2017 the Applicant Mala Mala submitted Referral KI97/17 and the Applicant Ali Salihu submitted Referral KI99/17 to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 August 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur in case KI97/17 and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 8 September 2017, pursuant to Rule 37.1 of the Rules of Procedure, the President of the Court ordered the joinder of the Referral KI97/17 with Referral KI99/17. By this order, it was decided that the Judge Rapporteur and the

composition of the Review Panel would be the same as it was decided by the President on appointment of the Judge Rapporteur and the Review Panel in Case KI97/17 on 22 August 2017.

8. On the same date, the Court notified the Applicants about the registration and joinder of Referral KI99/17 to Referral KI97/17. The Court also notified the Supreme Court about the registration and joinder of Referrals.
9. On 26 September 2017, the Applicant Nurije Beka submitted Referral KI115/17 to the Court.
10. On 3 October 2017, pursuant to Rule 37.1 of the Rules of Procedure, the President of the Court ordered the joinder of the Referrals KI115/17, KI 99/17 to Referral KI97/17. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel would be the same as it was decided by the President on appointment of the Judge Rapporteur and the Review Panel in Case KI97/17 on 22 August 2017.
11. On 5 October 2017, the Court notified the Applicants about the registration and joinder of Referrals KI97/17 and KI99/17 with KI115/17. On the same date, the Court notified the Supreme Court about the registration and joinder of Referrals.
12. On 11 October 2017, the Applicant Xhevat Xhinovci submitted the Referral KI121/17 to the Court.
13. On 24 October 2017, pursuant to Rule 37.1 of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI121/17, KI115/17, KI99/17 to Referral KI97/17. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel would be the same as it was decided by the President on appointment of the Judge Rapporteur and the Review Panel in Case KI97/17 on 22 August 2017.
14. On 27 October 2017, the Court notified the Applicants about the registration and joinder of Referrals KI99/17, KI115/17, KI121/17 to Referral KI97/17. The Court also notified the Supreme Court about registration and joinder of Referrals.
15. Meanwhile, on 16 October 2017, the Court also sent a request to the Basic Court in Mitrovica - Branch Skenderaj to present the date of receipt of the challenged decisions of the Supreme Court by three (3) Applicants who had not not attached them to the Referral. The same request was also sent to three (3) Applicants.
16. On 13 November 2017, the Basic Court in Mitrovica - Branch in Skenderaj submitted to the Court the acknowledgment on receipt showing the dates when the three (3) Applicants received the challenged decisions as requested by the Court on 16 October 2017.

17. On 10 January 2018, the Review Panel considered the report of the Judge Rapporteur and made a unanimous recommendation to the Court on the inadmissibility of the Referrals.

Summary of facts

18. Between 17 May 2010 and 5 March 2012, the Applicants each of them individually filed requests with the Basic Court in Mitrovica - Branch Skenderaj (hereinafter: the Basic Court) against the Government of the Republic of Serbia suing it for compensation of material and non-material damage that was caused to them between 1998 and 1999.
19. Between 24 July 2013 and 3 September 2014, the Basic Court, by individual decisions, dismissed the Applicants' claims and declared itself incompetent to decide on this legal matter.
20. The Applicants appealed the decisions of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals). They alleged an essential violation of the provisions of the contested procedure because according to the Applicants some of those provisions were not applied and were not taken into account. The Applicants requested that the decisions of the Basic Court be annulled and the Applicants' requests be declared admissible.
21. Between 3 April 2015 and 16 May 2016, the Court of Appeals rendered separate decisions rejecting each of the Applicants' appeals and reasoned that under the legal provisions the first instance court rightly found that it was not competent for these disputes. By these decisions, the Court of Appeals upheld the decisions of the Basic Court.
22. Each of the Applicants submitted on time separate requests for revision to the Supreme Court on the grounds of essential violation of the provisions of the contested procedure. They requested that their revision be approved, the decisions of the Court of Appeals and of the Basic Court be annulled and the case be remanded for reconsideration and retrial to the Basic Court.
23. On 20 March 2017, the Supreme Court rendered separate decisions and rejected the revisions of each of the Applicants as ungrounded. The Supreme Court in each of its decisions 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.
24. The Supreme Court further reasoned that the provisions of Article 28 of LCP cannot apply because their case does not concern natural or legal persons but has to do with a foreign state with which the state of Kosovo, on whose territory the damage was caused, has not concluded any international agreement on the jurisdiction of the local courts related to this kind of contests.

Applicant's allegations

25. The Applicants' allegations are identical and, therefore, the Court presents them as the same allegations.
26. The Applicants allege that the decisions of the Supreme Court violated their 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.
27. The Applicants allege that the regular courts "*have erroneously applied the applicable law referring to the territorial jurisdiction of the Basic Court [...], since the court territorially competent for the adjudication of legal matter is always the court in the territory of which the crime was committed, moral and material damage! This legal definition and valid position corresponds to 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*".
28. The Applicants state that they were not given "*the opportunity to be treated the same as in the legal procedure, according to the applicable law of Kosovo, [...] and the best judicial practices in the region.*"
29. The Applicants, referring to Article 21 paragraph 2 of the Constitution, claim that the regular courts "*have not applied the international advanced human rights standards. One of the standards is providing the injured party the opportunity to initiate the issue of compensation for moral and material damage caused as a result of direct activity of the Serbian authorities*".
30. Further, referring to Article 54 of the Constitution, the Applicants also state that "*the right to judicial protection of rights, the right of access to justice at national level, as well as the institutional guarantees for the protection of human rights have been denied*".
31. The Applicants refer to examples where victims of the Second World War were allowed "*to file individual claims with local courts for compensation for damage caused by Germany.*" In this regard, they specify that in the cases of Greece, Italy and the United States of America, where individuals were given a possibility to claim compensation for "*damages caused by Germany during World War II in accordance with international principle "per loci*".
32. Finally, the Applicants request the Court to annul the decisions of the regular courts as well as "*to request the Basic Court in Mitrovica - branch in Skenderaj to process again and adjudicate in accordance with applicable law and good court practices in the legal matter for compensation of moral and material damage [...]*"

Admissibility of Referrals

33. 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.
34. 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.*
35. 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.*
36. The Court considers that four (4) Applicants are authorized parties who challenge the acts of public authorities after exhausting the legal remedies available and the Referrals were filed within the four (4) month deadline as foreseen by the Law.
37. 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.*
38. 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.*
39. The Court recalls that the Applicants allege that the regular courts violated their rights protected by the Constitution, the ECHR and the UDHR, mainly the rights pertaining to the right to a fair trial and impartial and judicial protection of rights.

40. In this regard, the Court notes that the Applicants allege that the regular courts have erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court, claiming that the court in the territory of which damage was caused is the competent court to adjudicate their legal matters.
41. Therefore, the Court considers that the Applicants' allegations essentially pertain to the interpretation by the regular courts of the procedural provisions regarding their territorial jurisdiction and competence to deal with the Applicants' claims.
42. 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).
43. 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).
44. 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 Applicants' claims.
45. The Supreme Court when reviewing the Applicants' 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 Applicants' claims, because in their case, the 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.
46. The Supreme Court further specified that in the case of the Applicants: "*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*".
47. 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 Applicants. In this way, the Applicants were given the opportunity to present at all stages of the proceedings the arguments and evidence they consider relevant to their cases.

48. All the arguments of the Applicants, 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 Applicants 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).
49. The mere fact that the Applicants are 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 KI 136/14, *Abdullah Bajqinca* Resolution on Inadmissibility of 10 February 2015, paragraph 33).
50. Further, the Court notes that the submitted facts and allegations of the Applicants are identical to several referrals for which the Court decided that they were inadmissible (see cases of the Constitutional Court KI73/17, KI78/17 and KI85/17, *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 30 November 2017).
51. In sum, the Court considers that the Applicants have not presented facts and arguments showing that the proceedings before the regular courts presented in any way a constitutional violation of their 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.
52. Therefore, the Applicants' Referrals are manifestly ill-founded on constitutional basis and should 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, 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 10 January 2018, unanimously

DECIDES

- I. TO DECLARE the Referrals 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

Selvetë Gërxhaliu-Krasniqi

President of the Constitutional Court

Arta Rama-Hajrizi

