



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

Prishtina, on 03 Juna 2019
Ref. no.:RK 1368/19

RESOLUTION ON INADMISSIBILITY

in

cases no. KI177/18, KI182/18 and KI191/18

Applicant

Rrahman Halili, Gani Bekteshi and Xhevat Shala

Constitutional review of 3 decisions of the Supreme Court of the Republic of Kosovo rendered between 10 September and 18 October 2018

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

Applicants

1. Referral KI177/18 was submitted by Rrahman Halili; Referral KI182/18 was submitted by Gani Bekteshi; and Referral KI191/18 was submitted by Xhevat Shala. All the abovementioned (hereinafter: the Applicants) are from Municipality of Skenderaj.

Challenged decision

2. The Applicants challenge the constitutionality of 3 (three) decisions of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), as follows: Rrahman Halili- Decision Rev. No. 257/2018, of 10 September 2018, Gani Bekteshi – Decision Rev. No. 281/2018 of 18 September 2018, and Xhevat Shala- Decision Rev. No. 306/2018 of 18 October 2018;

Subject matter

3. The subject matter of the referrals is the constitutional review of the challenged decisions, which allegedly violate 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 for 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 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 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 No. 01/2018 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 14 November 2018, the Applicant of Referral KI177/18 submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 November 2018, the Applicant of Referral KI182/18 submitted his Referral to the Court.
7. On 14 December 2018, the Applicant of Referral KI191/18 submitted his Referral to the Court.
8. On 12 December 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur in case KI177/18, and the Review Panel composed of Judges: Selvete Gërzhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban (members).
9. On 12 December 2018, in accordance with paragraph 1, of Rule 40 (Joinder and Severance of Referrals) of the Rules of Procedure, the President of the Court ordered the joinder of Referral KI182/18 with Referral KI177/18.

10. On 24 December 2018, in accordance with paragraph 1, of Rule 40 (Joinder and Severance of Referrals) of the Rules of Procedure, the President of the Court ordered the joinder of the Referral KI191/18 with Referrals KI177/18 and KI182/18.
11. On 22 January 2019, the Court notified the Applicant about the registration and joinder of Referrals.
12. On the same date, the Court also notified the Supreme Court about the registration and joinder of Referrals.
13. On 14 May 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. Between 17 June 2009 and 18 September 2017, the Applicants individually 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 not -material damage that was caused during the war between 1998 and 1999.
15. During the period 20 September 2013- 30 April 2018, the Basic Court, by individual decisions, dismissed the Applicants' claims and declared itself incompetent to decide.
16. The Applicants filed individual appeals against the decisions of the Basic Court, with the Court of Appeals of Kosovo, due to the allegation of essential violation of the provisions of the contested procedure. The Applicants requested that the decisions of the Basic Court be annulled and the Applicants' Referrals be declared admissible.
17. Between 30 May 2018 and 31 July 2018, the Court of Appeals rendered separate decisions by rejecting each of the Applicants' appeals and upholding the decisions of the Basic Court.
18. Each of the Applicants, individually, filed individual request for revision with the Supreme Court, alleging that there has been a violation of the provisions of the contested procedure. They requested that their requests for revision be approved, the decisions of the Court of Appeals and of the Basic Court be annulled and their legal matter be referred for reconsideration to the Basic Court. The Applicants alleged that there are other provisions of the Law on Contested Procedure which regulate the issue of jurisdiction in their cases. In the present case, according to them, the provisions of Article 28, 47, 51, 60 and 61 of the Law on Contested Procedure related to the jurisdiction of the courts should have been applied in disputes with an international element.
19. Between 10 September and 18 October 2018, the Supreme Court rendered separate decisions (as stated in paragraph 3), rejecting the request for revision

of each of the Applicants as ungrounded. The main arguments of the Supreme Court in each of these decisions were as follows:

“Taking into account the [provisions of the Law on Contested Procedure] LCP as well as the fact that by the request the respondent Republic of Serbia - Government of R.S. in Belgrade [...], in the present case it is about the legal-property dispute in the foreign state, the norms of international law apply, for which the domestic court is not competent to decide, therefore, the Supreme Court of Kosovo assesses that the Basic Court and the Court of Appeals have correctly applied the provisions of Article 18.3 and Article 39 par. 1 and 2 of the LCP, when they declared itself incompetent to adjudicate this legal matter and dismissed the claim [of the Applicants], since the court with territorial jurisdiction is the court in the territory of which is the seat of the Assembly of the Republic of Serbia, [and] the seat of the Assembly of the Republic of Serbia as a responding party is not in the territory of the Courts of the Republic of Kosovo.

[...]

The provision of Article 28 of LCP, which the Applicants refer to, foresee the jurisdiction of domestic courts in disputes with an international (foreign) elements, cannot be applied in the present case, due to the fact that this case does not have to do with foreign natural persons nor with foreign legal persons, but with a foreign state, with which to the present moment the state of Kosovo, on which territory was caused the damage, has never been any international agreement [...] regarding the jurisdiction of the local courts for these types of disputes [...]. The allegation in the revision [of the Applicants] that in the present case we are dealing with the territorial jurisdiction is ungrounded, based on Articles 47, 51 and 61 of the LCP, because according to the assessment of the Supreme Court, these provisions do not relate to the present case [...], the lower instance courts have correctly applied the provision of Article 18.3 of the LCP, taking into account the other reasons mentioned above”.

Applicant’s allegations

20. The Applicants’ allegations are identical, and therefore, the Court presents them as the same allegations for all Applicants of these joint referrals.
21. 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.
22. The Applicants allege that the regular courts have “*incorrectly applied the applicable law referred to the territorial jurisdiction of the Basic Court [...], since the court with territorial jurisdiction for the adjudication on legal matters, is always the court in the territory of which the crime was committed, moral namely material damage! This valid legal definition and position corresponds to the interest of the injured party, the principle of economy in judicial and administrative proceedings, and in accordance with*

the international principle - per loci, the resolution of claims based on the place where the crime was committed”.

23. The Applicants, referring to Article 21 paragraph 1 of the Constitution, claim that the regular courts “*did not apply international advanced human rights standards. One of the standards is to allow the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities [...]*”.
24. The Applicants, referring to Article 22 of the Constitution, claim that, while “*human rights guaranteed by international conventions, agreements and instruments are a priority in the event of conflict with the laws and other provisions of public authorities [...] filing lawsuits before the local courts is also based on Article 6 of the ECHR and Article 15 of the UDHR [...]*”.
25. The Applicants also state that “*The obligation to apply Geneva Conventions [...] is also foreseen by the International Humanitarian Law of Kosovo*”. According to the Applicants, the regular courts have violated the constitutional provisions because they have not applied the provisions of international conventions as a category of domestic legal order.
26. The Applicants, referring to Article 53 of the Constitution, state that “*even though Kosovo is not a member of the Council of Europe and consequently it is not a signatory party to the Convention, it does not constitute an obstacle to the application of the norms of the Convention*”.
27. The Applicants, referring to Article 54 of the Constitution, also state that “*the right to judicial protection of rights, the right to access to justice at the national level and the institutional guarantees for the protection of human rights have been denied*”.
28. The Applicants further refer to some examples of the international case law whereby, according to them, the Second World War victims were allowed to “*file individual indictments before the national courts for compensation of damage caused by Germany*”. In this regard, they specify that in the cases of Greece and Italy, the individuals were afforded the opportunity to seek compensation for the “*damage caused by Germany during World War II in accordance with international principle ‘per loci’*”.
29. Finally, the Applicants request 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 applicable law and good court practices the legal matter for compensation of moral and material damage [...]*”.

Admissibility of the Referral

30. The Court will first examine whether the Referrals have fulfilled the admissibility requirements established in the Constitution and further specified in the Law, and foreseen in the Rules of Procedure.

31. As an initial note, the Court notes that the subject-matter of these joined referrals, and the allegations raised in those referrals are similar to a number of other referrals on which the Court has already decided (see the decisions of the Constitutional Court in cases: KI73/17, KI78/17 and KI85/17, Resolution on Inadmissibility, of 23 October 2017; cases KI97/17, KI99/17, K115/17 and KI121/17, Resolution on Inadmissibility of 10 January 2018; and cases No. KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, Resolution on Inadmissibility, of 19 February 2019).

32. As to the admissibility of the referrals of present cases, the Court first refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide that:

“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”.

[...]

33. The Court further refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which foresee:

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...”.

34. In addition, the Court also refers to the Rules of Procedure, namely paragraph (2) of Rule 39 [Admissibility Criteria], which define the following:

“(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”.

35. The Court finds that the three Applicants are authorized parties who challenge an act of a public authority after exhaustion of all legal remedies. The Applicants have also specified the rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and have submitted the

Referral in accordance with the deadline set out in Article 49 of the Law and 39 (1) (c) of the Rules of Procedure.

36. In addition, the Court examines whether the Applicants' Referral meets the admissibility requirement foreseen in Rule 39 (2) of the Rules of Procedure. In this regard, the Court recalls that the Applicants allege that the regular courts violated certain rights protected by the Constitution, the ECHR and the UDHR, with particular emphasis on the right to fair and impartial trial and the right to judicial protection of rights.
37. In this regard, the Court notes that the Applicants allege that the regular courts erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court. They further claim that the court in which territory the damage is caused is the competent court to adjudicate their cases..
38. The Court considers that the Applicants' allegations, in substance, relate to the interpretation by the regular courts of the relevant legal provisions that regulate their territorial jurisdiction, namely the competence to deal with the claims of the Applicants.
39. The Court emphasizes its general view that correct and complete determination of factual situation, as well as relevant legal interpretations, in principle, fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure that the standards and rights guaranteed by the Constitution are respected and consequently it cannot act as a "fourth instance court" (see: among other, the cases of the Constitutional Court, KI86/11, Applicant *Milaim Berisha*, Resolution on Admissibility of 5 April 2012, paragraph 33; as well as joined cases KI73/17, KI78/17 and KI85/17, Applicants *Istref Rexhepi and 28 others*, Resolution on Admissibility, of 27 November 2017, paragraphs 46 and 47).
40. In the present case, the Court notes that the Supreme Court considered the Applicants' allegations regarding the interpretation by the Court of Appeals and the Basic Court of the relevant provisions legally related to the competence to adjudicate in the cases of the Applicants.
41. In reviewing the Applicants' allegations, the Supreme Court reasoned that the Basic Court and the Court of Appeals have correctly applied the provisions of the Law on Contested Procedure when they found that they had no jurisdiction to adjudicate in these court cases. Therefore, the Supreme Court rejected the Applicants' allegations, reasoning that the general territorial jurisdiction is in the court in the territory of which is the seat of the Assembly of the Republic of Serbia which is not in the territory of the Kosovo courts.
42. Therefore, in some of its decisions (see, for example, Decision in case Rev. No. 306/2018, the Supreme Court, *inter alia*, reasoned:

"[...] according to the provision of Article 28.2 of the LCP, when it comes to disputes with a foreign element, the domestic court is competent only if this international competence derives expressly from an international agreement or by the law itself [...] Article 39.1 of LCP foresees that "for the

adjudication of disputes against Kosovo [...] of the general territorial jurisdiction is the court in which territory is the seat of its assembly. While in paragraph 2 it is foreseen 'in the adjudication of the disputes against other legal persons, the general territorial jurisdiction is vested in the court within whose territory their headquarters is registered.' Thus, also by provision of Article 54.1 of the Law on the conflict resolution of the law with the provisions of other states provides that in the legal-property disputes the jurisdiction of the domestic court exists if the property of the respondent or the thing sought by lawsuit is located in our country”.

43. 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 regarding the jurisdiction of the domestic courts for these kinds of disputes"*.
44. The Court considers that the findings of the Basic Court, the Court of Appeals and of the Supreme Court were reached after a detailed examination of all the arguments and interpretations presented by the Applicants. In this way, the Applicants were given the opportunity to present at all stages of the procedure the arguments and legal interpretations they consider relevant to their disputes.
45. Therefore, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair and that the allegation of arbitrary legal interpretation by the regular courts cannot be substantiated.
46. With regard to the Applicants' allegations as to *"their right to judicial protection and access to justice"*, the Court emphasizes the case law of the European Court of Human Rights (ECtHR), on which it is obliged to refer to in accordance with Article 53 of the Constitution. The Court notes that the ECtHR has in some cases noted procedural barriers imposed by the principle of sovereign state immunity - as one of the fundamental principles of international public law - in relation to judicial proceedings that may be conducted against a state in the domestic courts of another state. (See the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, Resolution on Inadmissibility, of 30 January 2019, paragraphs 58 and 59, see, *mutatis mutandis*, also the ECtHR cases, *Jones and Others v. United Kingdom*, applications 34356/06 and 40528/06, Judgment of 14 January 2014, *Al-Adsani v. United Kingdom*, Judgment of 21 November 2001, application 35763/97 Judgment of 21 November 2001).
47. In addition, in the case *Al-Adsani v. The United Kingdom*, the ECtHR argued as follows: *"The right of access to court may be subject to limitations, unless the essence of the very right is impaired. Such limitations must pursue a legitimate aim and be proportionate [...] The recognition of sovereign state immunity in civil proceedings follows the legitimate aim of respecting the international law [...]. As far as proportionality is concerned, the Convention should, as far as possible, be interpreted in accordance with other rules of*

international law, including those relating to the immunity of States. Thus, the measures taken by the state which reflect the general rules of international law on the immunity of States cannot, in principle, be regarded as a disproportionate limitation of the right of access to the court". Such an attitude, as far as concerns the tension between the principle of sovereign immunity of states and the right to access to justice (court), was emphasized by the International Court of Justice (see, for example, *Germany v Italy; Greece as an intervening party*, Judgment of 3 February 2012).

48. In the light of the foregoing arguments, the Court considers that it is important to emphasize the fact that the regular courts of Kosovo did not deal with, namely, did not adjudicate regarding the Applicants' right to seek compensation of damage, but only with respect to the territorial jurisdiction of the courts of Kosovo to conduct proceedings against another state.
49. Referring to the Applicants' allegations regarding the application of the Geneva Convention in their court cases, the Court notes that the Applicants have only referred to this Convention, but did not provide further arguments in relation to this allegation (See recent decisions of the Constitutional Court, in the joined cases: KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, cited above, paragraph 61).
50. The Court emphasizes its general view that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court, or of other regular courts, as well as mentioning of articles of the Constitution or international instruments, are not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (See case of the Constitutional Court, KI136/14, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, paragraph 33).
51. The Court also notes that the presented facts and the Applicants' allegations are almost identical to some of the previous Referrals, where the Court found that they were inadmissible, as manifestly ill-founded on constitutional basis (See decisions of the Constitutional Court, in the joined cases: KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, cited above, KI73/17, KI78/17 and KI85/17, cited above, KI97/17, KI99/17, KI115/17 and KI121/17, cited above, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, cited above).
52. In sum, the Court considers that the Applicants' referrals do not prove that the proceedings before the regular courts have committed 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, as well as Article 6 of the ECHR and Article 15 of the UDHR.

53. In conclusion, the Court concludes that the Applicants' referrals are manifestly ill-founded on constitutional basis and are to be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (b) of the Rules of Procedure, on 14 May 2019, unanimously

DECIDES

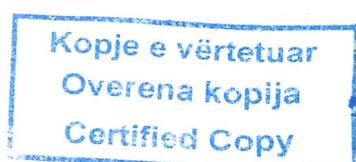
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bekim Sejdiu

Arta Rama-Hajrizi



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