



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 23 September 2019
Ref. no.:RK 1431/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI114/19

Applicant

Nazmi Krasniqi

Request for constitutional review of Decision Rev. No. 45/219 of the Supreme Court of 7 March 2019, Decision Ac. No. 3225/2018 of the Court of Appeals of 14 September 2018, and Judgment Ac. No. 5330/2012 of the Court of Appeals of 17 March 2015

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 Nazmi Krasniqi from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision Rev. No. 45/219 of the Supreme Court of 7 March 2019, in conjunction with Decision Ac. No. 3225/2018 of the Court of Appeals of 14 September 2018, and Judgment Ac. No. 5330/2012 of the Court of Appeals of 17 March 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision of the Supreme Court, which allegedly violates the Applicant's fundamental constitutional rights and freedoms guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 24.2 [Equality Before the Law], Article 31. [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as the rights guaranteed by Article 6 (Right to a fair trial), Article 8 (Right to respect for private and family life), and Article 10 (Freedom of expression) of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant also requests the Court to impose an interim measure which would repeal Decision P. No. 400/17 of the Private Enforcement Agent, requesting him to vacate the property in question.

Legal basis

5. The Referral is based on Article 113.7 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 Rules 32 [Filing of Referrals and Replies] and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 4 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 7 July 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 19 July 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 4 September 2019, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. The Court notes from the case file that the Applicant was one of the responding parties in the dispute, which was conducted upon a lawsuit filed by the Public Housing Company (hereinafter: the claimant) from Prishtina regarding the release of the property in which the Applicant lived. As a result of these proceedings, the Applicant conducted three (3) separate court proceedings.

First court proceedings upon the lawsuit to vacate property

11. On 25 September 2009, the Municipal Court in Prishtina rendered Judgment C. No. 2324/2005, which approved the claimant's statement of claim and ordered that the Applicant vacate the apartment of people and things located in Prishtina, Dardania neighborhood, building 9/4, entrance 4, second floor, apartment no. 12, all this within 15 days from the day the judgment becomes final and under the threat of forced execution.
12. The Applicant filed an appeal with the Court of Appeals against the judgment of the Municipal Court.
13. On 17 March 2015, the Court of Appeals rendered Judgment Ac. No. 5330/2012, rejecting the Applicant's appeal as ungrounded.
14. The claimant submitted to the Executive Office – of the Private Enforcement Agent in Prishtina, a proposal requesting enforcement of Judgment C. No. 2324/2005 of the Municipal Court in Prishtina of 28 September 2009, upheld by Judgment Ac. No. 5330/2012 of the Court of Appeals of 17 March 2015.
15. On the proposal of the claimant, on 8 August 2017, the Executive Office - of the Private Enforcement Agent rendered Decision P. No. 400/2017, which ordered the Applicant to vacate the apartment in question within 7 days.

Second court proceedings regarding Decision P. No. 400/2017 of the Private Enforcement Agent

16. On 14 August 2017, the Applicant filed an objection with the Basic Court against Decision P. No. 400/2017 of the Private Enforcement Agent.
17. On 26 March 2018, the Basic Court rendered Decision PPP. No. 789/2017, which rejected the Applicant's objection as ungrounded.
18. The Applicant filed appeal with the Court of Appeals against Decision PPP. No. 789/2017 of the Basic Court.
19. On 14 September 2018, the Court of Appeals rendered Decision Ac. No. 3225/2018, which rejected the Applicant's appeal as ungrounded.

Third court proceedings upon request for repetition of proceedings

20. On 14 August 2017, the Applicant filed a proposal with the Basic Court for the repetition of the contested procedure.
21. In his request for repetition of the proceedings, the Applicant stated that he did not authorize the legal representative to represent him, and that the final judgment of the Court of Appeals of 17 March 2015 was served on the legal representative and not on him, so that he could not request a repetition of the procedure within the deadline.
22. On 5 September 2017, the Basic Court rendered Decision C. No. 2324/05 which dismissed as out of time the request for repetition of the proceedings pursuant to Article 237, paragraph 1 of the LCP, stating that:

“...the subjective deadline for filing a proposal for repetition of the proceedings is 30 days from the date of receipt of the decision. In the present case, the judgment of the first instance court was received by the respondent himself on 18.01.2010, while the decision of the second instance court, which upheld Judgment C. No. 2324/2005 of the Municipal Court in Prishtina of 28.09.2009 was served on the authorized representative of the respondent on 03.11.2015, while the proposal for repetition of the proceedings was filed on 14.08.2017, out of the legal deadline for such a legal remedy.

As regards the allegation that the legal representative did not have the authority to represent him, the Basic Court found that the case file contained a power of attorney dated 30.06.2006, which authorizes a lawyer, while as regards the allegation that the latter revoked the lawyer's power of attorney, the Court did not find the revocation of the power of attorney in the case file.”

23. The Applicant filed appeal with the Court of Appeals against Decision C. No. 2324/05 of the Basic Court.
24. On 27 September 2018, the Court of Appeals rendered Decision Ac. No. 4795/17, which rejected the Applicant's appeal as ungrounded, with the reasoning:

“The Court of Appeals accepts the conclusion of the first instance court as fair and lawful on dismissing the proposal for repetition of proceedings as out of time, as such a finding is in accordance with Article 237, paragraph 1 of the LCP, which provides that: Proposal for repeating the procedure presented after the deadline, is incomplete and not permit able is rejected by the court of the first instance through a verdict without a court hearing.”

25. The Applicant filed a request for revision with the Supreme Court against Decision C. No. 2324/05 of the Municipal Court and Decision Ac. No. 4795/17 of the Court of Appeals.

26. On 7 March 2019, the Supreme Court rendered Decision Rev. No. 45/219, which rejected the Applicant's request for revision as ungrounded, stating that:

"The Supreme Court assesses as ungrounded the allegations made by the proposer (the Applicant) that he was not personally served with the judgment, and that the latter did not give the power of attorney to represent him in this matter, ... There is also a power of attorney in the case file by which the respondent authorized a lawyer from Prishtina to represent him in the contested proceedings in a capacity of the responding party, who also received the judgment of the second instance court Ac. No. 5330/2012 of 17.03.2015 on 03.11.2015. In accordance with Article 234 paragraph (b) and (c) of the LCP, it follows that the subjective deadline for submitting a proposal for repetition of the proceedings is 30 days from the date of receipt of the decision."

Applicant's allegations

27. The Applicant alleges *"that there has been a violation of the Constitution in Decision Rev. No. 45/2019 of the Supreme Court of Kosovo of 7 March 2019, Decision Ac. No. 3225/2018 of the Court of Appeals of 14 September 2018, and Judgment Ac. No. 5330/2012 of the Court of Appeals of 17 March 2015, namely Articles 22, 24, 31 and Articles 6, 8 and 10 of the ECHR, because he was not given the opportunity to comment on the allegations raised against him."*
28. The Applicant also alleges that there has been a violation *"as he was not given the opportunity to participate in the court session upon the request for repetition of the proceedings, where it was decided to his detriment, the Applicant also added that he did not give anyone the authority to represent him, and when he was informed that there were court decisions to his detriment, he requested that the proceedings be reopened on the basis of the applicable legal provisions, which were rejected by the court decisions"*.
29. The Applicant addresses the Court with a request to quash all decisions, to be tried again in a non-impartial manner in accordance with the evidence which he will submit during the proceedings.
30. The Applicant also requests the Court to impose an interim measure in order to annul the decision of the private enforcement agent to vacate the property in question.

Admissibility of the Referral

31. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, further specified in the Law and foreseen in the Rules of Procedure.
32. 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.”

33. The Court also examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...”

34. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraph (1) (c) and paragraph 3 (b) of the Rules of Procedure, which stipulate:

(1) The Court may consider a referral as admissible if:

[...]

(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant.

(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; [...].”

35. Having examined the Applicant's case file, the Court notes that he conducted a total of three (3) separate court proceedings in relation to the property in question, and that all three were completed by final court decisions.

Applicant's first and second court proceedings

36. More specifically, as regards the first court proceeding, it was completed by final Judgment Ac. No. 5330/2012 of the Court of Appeals of 17 March 2015, which was served on the Applicant's legal representative on 3 November 2015, from when the deadlines for submitting a referral to the Constitutional Court runs.
37. The second court proceeding was completed by final Decision Ac. No. 3225/2018 of the Court of Appeals of 14 September 2018, from when the deadline for submitting a referral to the Constitutional Court runs.
38. According to its findings, the Court concludes that the allegations regarding the first and second court proceedings are out of time because they have not been submitted in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, and accordingly, it will not deal with them.
39. As regards the third court proceeding, the Court notes that it was initiated by the Applicant on 14 August 2017, when he filed a request with the Basic Court in which he requested the repetition of the contested proceedings in entirety, to discuss again the merits of the claimant's statement of claim, initiated by the claimant in 2009.
40. The third court proceeding ended on 7 March 2019, by final Decision Rev. No. 45/219, of the Supreme Court, based on which it follows that the Applicant, regarding the third court proceeding, fulfilled the requirements established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

Third court proceeding on the request for repetition of the proceedings

41. The Court recalls that the Applicant challenges Articles 22, 24, 27, and 31 of the Constitution, as well as Articles 6 and 8 of the ECHR, because the courts rejected his request for the reopening of court proceedings by decisions, even though he stated that the judgment of the Court of Appeals of 17 March 2015, was not served on him personally, but on a lawyer who he did not authorize.
42. The Court, having regard to the fact that the third court proceeding concerns issues exclusively related to the repetition of the contested proceedings, states 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*".
43. In this regard, taking into account the Applicant's allegation of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which the Court may review exclusively in connection with the third proceedings, the Court, referring to the case law of the ECtHR and its own case law, reiterates

that Article 31 of the Constitution and Article 6 of the ECHR do not apply to requests for the reopening or repeating of proceedings. (see: by analogy Constitutional Court cases: KI07/17/15, *Pashk Mirashi*, Resolution on Inadmissibility of 12 June 2017, paragraph 64; KI80/15, 81/15 and 82/15, *Rrahim Hoxha*, Resolution on Inadmissibility of 27 December 2016, paragraph 31, KI76/18, *Pjetër Boçi*, Resolution on Inadmissibility, of 14 December 2018, see also ECtHR cases, *inter alia*, *Oberschlick v. Austria*, No. 23727/94, Decision on Inadmissibility of 21 March 1994; *Dowsett v. United Kingdom*, No. 8559/08, Decision on Inadmissibility of 4 January 2011, *Sablon v. Belgium*, No. 36445/97, Judgment of 10 April 2001, paragraph 86).

44. The Court also recalls that Article 6 ECHR does not apply to unsuccessful attempts to reopen criminal or contested proceedings, based on new facts or through an extraordinary or special review for procedural reasons, which are not directly accessible to natural persons and which enforcement depends on discretionary powers of a specific authority (see ECtHR *Tumilovich v. Russia*, application 47033/99, 22 June 1999).
45. Moreover, Article 6 of ECHR does not apply as long as the domestic authorities do not agree to reopen the proceedings, even in cases where the Applicant has filed a request for reopening thanks to a previous judgment of the Court, which found that there has been a violation of the Convention regarding the challenged proceedings before the domestic courts (see ECtHR judgment *Franz Fischer v. Austria*, application no. 37950/97, of 29 May 2001). However, as soon as the proceedings are reopened or when an extraordinary review of the proceedings is approved, the safeguards referred to in Article 6 of the ECHR apply to the entire court proceeding (see ECtHR decision *Vanyan v. Russia*, application 53203/99, 15 December 2005 paragraphs 56–58).
46. Accordingly, the Court considers that the Applicant's allegations pertaining to the request for repetition of the court proceedings are incompatible *ratione materiae* with Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
47. Therefore, the Applicants Referral is to be declared inadmissible, in accordance with Rule 39 (3) (b) of the Rules of Procedure.

Request for interim measure

48. The Court recalls that the Applicant also requests the Court to impose an interim measure, "*which would repeal Decision P. No. 400/17 of Private Enforcement Agent*".
49. The Court has just concluded that the Applicant's referral is to be declared inadmissible on constitutional basis.
50. Therefore, in accordance with Article 27.1 of the Law, and in accordance with Rule 57 (4) (a) of the Rules of Procedure, the Applicant's request for an interim measure should be rejected, as it cannot be subject of review, because the Referral was declared inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 49 of the Law and Rules 39 (1) (c), (3) (b) and 57 (1) of the Rules of Procedure, in the session held on 4 September 2019, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- 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

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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