



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

Prishtina, on 23 September 2019
Ref. no.:RK 1430/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI200/18

Applicant

Sokol Haziraj

**Constitutional review of Decision Rev. No. 261/2018 of the Supreme
Court of the Republic of Kosovo of 30 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

Applicant

1. The Referral was submitted by Sokol Haziraj (hereinafter: the Applicant), who is represented by Naser Peci, a lawyer.

Challenged decision

2. The Applicant challenges the constitutionality of Decision Rev. No. 261/2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 30 October 2018, which was served on him on 15 December 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated the Applicant's rights guaranteed by Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 13 of the European Convention on Human Rights (hereinafter: the Convention), and Protocol No. 7 thereof.

Legal basis

4. The Referral is based on paragraphs 1 and 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 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 21 December 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 January 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 17 January 2019, the Court notified the Applicant about the registration of the Referral and its supplementation with relevant documentation. On the same date, a copy of the Referral was sent to the Supreme Court.
8. On 4 September 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

9. On 1 November 1996, the Municipal Court in Prishtina, by Act Vr. No. 6399/96, certified the contract concluded between N.G. (seller), who represented J.G. and N.V. (buyer), on the sale-purchase of immovable property No. 653/1 and No. 655/2, in a place called "Novo Lojze" with a total surface area of 027.02 ha, with culture field of class IV, Cadastral Zone Caglavica, Municipality of Prishtina.

10. On 21 November 2000, the Municipal Court in Prishtina, by Act Vr. No. 3487/2000, certified the new contract concluded between N.V. (now the seller) and N.G., (now the buyer).
11. On 26 September 2009, the claimant J.G. filed a lawsuit against the respondent N.G. for unauthorized contract with N.V., requesting the court to annul the contract for the sale-purchase of the immovable property in question because it lacked essential elements, namely the will of the parties, the payment of the price and the delivery of the immovable property, which in accordance with the legal provisions of the LOR, the absence of these elements rendered the contract null and void. In the capacity of the intervener in the proceedings, the Applicant also submitted a proposal for approval of the lawsuit of J.G. by the first instance court.
12. On 22 December 2009, the Municipal Court in Prishtina, by Judgment C. No. 397/2006, rejected the statement of claim of the claimant J.G. and the Applicant's proposal as an intervener, considering that there was insufficient evidence to approve the statement of claim, seeking the annulment of the contract entered into between N.G. and N.V.
13. The Applicant and the claimant J.G. filed appeal against the Judgment of the Municipal Court in Prishtina of 22 December 2009 with the District Court in Prishtina, on the grounds of essential violations of the provisions of the contested procedure.
14. On 14 May 2010, the District Court in Prishtina, by Judgment Ac. No. 240/2010, rejected as ungrounded the appeal filed by the Applicant, as intervener and claimant J.G., thus confirming the Judgment of the Municipal Court in Prishtina of 22 December 2009.
15. The Applicant and claimant J.G., against the Judgment of the District Court in Prishtina of 14 May 2010, filed a request for revision with the Supreme Court, on the grounds of essential violations of the provisions of the contested procedure and erroneous application of substantive law, proposing that both Judgments of the lower instance courts be modified so that the claimant's statement of claim be approved as grounded or the Judgments be quashed and the case be remanded to the first instance court for retrial. Against the same Judgment, the State Prosecutor also filed a request for protection of legality, on the grounds of erroneous application of substantive law, with the proposal that the challenged judgments be quashed and the case be remanded to the first instance court for retrial.
16. On 16 April 2013, the Supreme Court, by Judgment Rev. Mlc. No. 217/2010, dismissed as inadmissible the request for revision filed by the Applicant, rejected as ungrounded the request for revision filed by the claimant J.G., while it considered as withdrawn the request for protection of legality filed by the State Prosecutor and, at the request of the prosecutor. Following the decision, the Applicant requested clarification from the Supreme Court on his appeal, which on 14 May 2013, through the Presiding of the Review Panel, instructed the Applicant to refer the matter to the lower instance courts.

17. On 14 June 2013, the Applicant requested the Basic Court in Prishtina to submit his appeal to the Court of Appeals for a decision on merits. Through this appeal, the Applicant challenged the Judgment of the Municipal Court in Prishtina of 22 December 2009, on the grounds of essential violations of the provisions of the contested procedure and erroneous application of the substantive law, proposing that: *"...to uphold the intervener's appeal, to modify the challenged judgment so as to approve in entirety the claimant's statement of claim or to quash the challenged judgment and remand the case to the first instance court for reconsideration and retrial"*.
18. On 28 March 2017, the Court of Appeals, by Judgment Ac. No. 1887/13, dismissed as inadmissible the appeal filed by the Applicant, reasoning *inter alia* that: *"The Court of Appeals as a court of second instance, after assessing the appealing allegations concerning the impugned judgment, in support of the provisions of Articles 194 and 195 of the LCP, found that: The appeal of the authorized representative of the intervener is inadmissible."*(...) *In the light of the cited provisions, the court of second instance assessed and decided that the appeal of the intervener's authorized representative is inadmissible because the appealed judgment was upheld in entirety by the judgment of the District Court in Prishtina Ac. No. 240/2010, of 14.05.2010, and from that date the latter had become fully effective"*.
19. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against Judgment Ac. No. 1887/2013 of the Court of Appeals, of 28 March 2018, on the grounds of essential violations of the provisions of the contested procedure.
20. On 30 October 2018, the Supreme Court, by Decision Rev. No. 261/2018, rejected as ungrounded the request for revision filed by the Applicant, reasoning that the decision of the second instance became final, because.: *"The Supreme Court ... by its judgment Rev. Mlc. No. 217/2010 of 16 April 2013, rejected as ungrounded the claimant's revision filed against the Judgment of the District Court in Prishtina, Ac. No. 240/2010 of 14.5.2010 and dismissed as inadmissible the revision of the intervener of the authorized representative filed against the aforementioned judgment, and the request for protection of legality filed by the State Prosecutor of Kosovo against the judgments of the District Court in Prishtina, Ac. No. 240/2010 of 14.5.2010 and it considered as withdrawn the Judgment of the Municipal Court in Prishtina C. No. 397/2006 of 22.12.2009. It follows that even in the proceedings by extraordinary remedies, the decision of the second instance and first instance court was upheld"*.

Applicant's allegations

21. The Applicant alleges that the decisions of the regular courts violated his fundamental right to use effective legal remedies guaranteed by Article 32 of the Constitution, *"An integral part of the right to legal remedy is the right to an effective legal remedy which is also recognized by the European Convention, Article (13), Protocol No. 7 of the European Convention*

guarantees the right of appeal so that everyone has the right to have their case heard by the highest court”.

22. The Applicant further alleges that: *“the case of the intervener has not been examined by the court of second instance on the merits of the appeal but by the flaws of the court it was dismissed as inadmissible”.*
23. Finally, the Applicant requests the Court to review the Referral on merits; find a violation of the right to legal remedies and annul Decision Rev. No. 261/2018.

Admissibility of the Referral

24. The Court examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, 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 Articles: 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

[...]

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...”

27. Regarding the fulfillment of these requirements, the Court finds that the Applicant is authorized party who challenges an act of a public authority, namely Judgment PML. No. 208/2017 of the Supreme Court, after exhaustion of all legal remedies provided by law. The Applicant also submitted Referral in accordance with the deadline set out in Article 49 of the Law.
28. However, the Court examines whether the Applicant has met the admissibility requirements set out in Rule 39 (2) of the Rules of Procedure, which foresees:

“(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”.
29. The Court recalls that the Applicant alleges a violation of his rights guaranteed by Article 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 13 of the Convention, and with Protocol no. 7 thereof, because he considers that his appeal as an intervening party in the proceedings initiated by claimant J.G. was not reviewed on merits by the regular courts.
30. In the present case, the Court will assess whether the Applicant’s allegations of violation of the abovementioned Articles were answered by the regular courts and whether their conclusions are reasoned and convincing.
31. The Court notes that the Applicant’s allegation raised in the appeal against the Judgment of the Municipal Court in Prishtina of 22 December 2009, the Court of Appeals reasoned as follows: *“The Court of Appeals as a court of second instance, after assessing the appealing allegations concerning the impugned judgment, in support of the provisions of Articles 194 and 195 of the LCP, found that: (...) In the light of the cited provisions, the court of second instance assessed and decided that the appeal of the intervener's authorized representative be dismissed as inadmissible because the appealed judgment was upheld in entirety by the Judgment of the District Court in Prishtina, Ac . No. 240/2010, of 14.05.2010, and from that date the same had become fully effective”.*
32. Moreover, the Court of Appeals further reasoned: *“The Court of Appeals the conclusion to dismiss the appeal also bases on the fact that the intervener’s claim by the judgment of the Municipal Court in Prishtina, C. No. 397/06, of 22.12.2009, was decided with special item in the enacting clause of the judgment - item IV (four) of the enacting clause and when the District Court in Prishtina decided upon the appeal of the claimant by Judgment Ac. No. 240/2010 of 14.05.2010, item IV (four) of the enacting clause of the first instance judgment did not leave it unexamined but decided that the first*

instance judgment should be upheld in its entirety. At the moment the judgment of the first instance was upheld in entirety by the court of second instance, then the first instance judgment can be modified only by extraordinary remedies, because the regular remedies against the final judgment are not allowed as in this case”.

33. The Court also notes that the Applicant’s allegation was also answered in a comprehensive manner by the Supreme Court, which in its decision regarding the revision, *inter alia*, reasoned: *“The Supreme Court ... in its judgment Rev. Mlc. No. 217/2010 of 16 April 2013, ... dismissed as inadmissible the revision of the interveners' authorized representative filed against the aforementioned judgment, (...) It follows that even in the proceedings of extraordinary remedies, the decision of the court of second instance, namely of the first instance was upheld. (...)*
34. In conclusion, the Supreme Court held: *“Therefore ... the appeal of the intervener is manifestly ill-founded in this situation after the judgment of the first instance court has become final and after all legal remedies have been exhausted, the second instance court, even in the view of this Court, acted correctly acted by dismissing the appeal of the intervener as inadmissible”.*
35. In this regard, the Court considers that the Applicant’s allegations, which he raised in the Court of Appeals through an appeal and in the Supreme Court, through the request for revision, the courts concerned responded in a comprehensive manner, reasoning in detail their conclusions. In this case, the regular courts considered that the Applicant’s allegations were also taken into account by the District Court, which held that the appeals filed by claimant J.G. and the Applicant were ungrounded, thereby upholding Judgment C. No. 397/2006 of the Municipal Court in Prishtina, of 22 December 2009. The courts further assessed that the claimant and the Applicant against the Decision Ac. No. 240/2010 of the District Court of 14 May 2010, had also exhausted the extraordinary legal remedy, the revision, and in this case the Supreme Court, by Judgment Rev. Mlc. No. 217/2010 of 16 April 2010, dismissed the Applicant’s request as inadmissible, while the request for revision filed by claimant J.G. was rejected as ungrounded.
36. In this respect, the Court notes that the Court of Appeals dismissed the Applicant’s appeal for purely procedural reasons, considering that the latter exhausted all effective legal remedies, regular and extraordinary, and that Judgment C. No. 397/2006 of the Municipal Court in Prishtina of 22 December 2009 had already become final. This finding of the Court of Appeals was also confirmed by the Supreme Court by Decision Rev. No. 261/2018, of 30 October 2018, which the Applicant challenges in the Court.
37. Therefore, the Court notes that the Applicant merely does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicants with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the constitutional rights (see, *mutatis mutandis*, case *Mezotur – Tiszazugi Tarsulat v. Hungary*, paragraph 21, ECtHR, Judgment of 26 July 2005; see

Resolution on Inadmissibility of the Constitutional Court in Case KI25/11, Applicant *Shaban Gojnovci*, of 28 May 2012, paragraph 28; see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

38. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact 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). It may not itself assess the facts which have led the regular courts to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction.
39. In fact, the role of regular courts is to interpret and apply the relevant rules of procedural and substantive law (see: the ECtHR case *Perlala v. Greece*, paragraph 25 and *Khan v. the United Kingdom*, paragraph 34, and see also cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011; and KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, para. 41).
40. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as “a fourth-instance court” (see, *mutatis mutandis*, Resolution on Inadmissibility of the Constitutional Court, case KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
41. Therefore, based on above, the Court considers that the Applicant has had ample opportunities to present before the regular courts all allegations of a violation of his rights. Furthermore, the Court considers that his arguments have been duly heard and reviewed by the regular courts. Therefore, the Court considers that the decisions of the regular courts are reasoned and that the proceedings, viewed in their entirety, were not in any way unfair or arbitrary (see case of ECtHR *Shub v. Lithuania*, No. 17064/06, Judgment of 30 June 2009).
42. In conclusion, the Court considers that the Referral, on constitutional basis, is manifestly ill-founded, because the Applicant did not sufficiently prove and substantiate his allegation of violation of the rights guaranteed by the Constitution and the Convention.
43. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 39 (2) of the Rules of Procedure, it is to be declared inadmissible.

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 (2) of the Rules of Procedure, on 4 September 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

Nexhmi Rexhepi

Arta Rama-Hajrizi



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