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

**Prishtina, on 2 December 2019**
**Ref. no.:RK 1473/19**

***This translation is unofficial and serves for informational purposes only.***

# RESOLUTION ON INADMISSIBILITY

in

**Case No. KI112/19**

Applicant

**Ilir Kabashi**

**Constitutional review of Decision Rev.no.47/2019 of the Supreme Court of Kosovo, of 12 March 2019**

**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 Ilir Kabashi, residing in Prishtina (hereinafter: the Applicant), represented by Shpend Bokshi, a lawyer in Prishtina.

## Challenged decision

2. The challenged decision is the Decision Rev.no.47/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 12 March 2019.

## Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals], Article 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## Proceedings before the Constitutional Court

5. On 2 July 2019, the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 July 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 15 July 2019, the Court notified the Applicant and the Supreme Court about the registration of the Referral.

8. On 7 November 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## Summary of facts

9. On 13 January 2004, the person SH.M. submitted a claim for confirmation of ownership against (now the deceased) I.M. in relation to: a) the cadastral parcel no.1865 CZ Prishtina (the disputed parcel), which was recorded in the name of the Applicant; and b) the cadastral parcel no.1867 CZ Prishtina, which was recorded in the name of I.V.

10. SH.M. claimed that he had bought the above parcels from the late I.M. in 1965. After that I.M. died, there was made a subjective modification of the claim and in relation to cadastral parcel no. 1867, the respondent I.V. was recorded as the owner of the said cadastral parcel on the basis of a contract signed between

D.D. as a seller and I.V. as a buyer, while SH.M., by the claim, was seeking the annulment of the contract between D.D. and I.V.

11. As regards the parcel challenged by this Referral, it was the Municipality of Prishtina that was the respondent, because I.M. had left no successors, while the contract signed between D.D. and the Applicant in relation to the challenged parcel, was revoked by the final Judgment of the Municipal Court, P.no.1710/2006, of 25 January 2007, with the reasoning that it was based on a "falsified document".

12. On 22 February 2007, at the request of SH.M., the Municipal Court in Prishtina (hereinafter: the Municipal Court), by Decision [E.nr.231/07], imposed an interim measure: prohibition to charge or sell the aforementioned parcels of land.

13. I.V. had filed an appeal against the Decision [E.no.231/07] of the Municipal Court.

14. On 11 February 2008, the Municipal Court by Decision [E.no.231/07] rejected again the appeal of I.V. and confirmed the Decision [E.no.231/07] of the Municipal Court of 22 February 2007, in relation to the interim measure.

15. On 5 June 2008, the Municipal Court, by Decision [C.no.35/04] allowed the Applicant to interfere on the side of the responding party, in the procedure concerning the claim for the disputed parcel.

16. On 29 January 2009, the Municipal Court by a decision revoked the Decision [C.nr.35/04] of the Municipal Court, of 5 June 2008 which concerned the allowing of the interferer in the Applicant's procedure, since he had not taken part in the court sessions regarding the claim.

17. On 29 January 2009, the Municipal Court, by Judgment C.no.35/2004, approved the claim of Sh.M. for confirmation of ownership related to the abovementioned parcels.

18. On 7 April 2015, the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), deciding on the appeals against the Judgment [C.no.35/2004] of the Municipal Court of 29 January 2009 filed by the claimant and the respondent, by Decision [Ac.no.5209/2012] remanded the case, concerning the confirmation of ownership in relation to the disputed parcel, for retrial and re-adjudication.

19. On 3 November 2017, the Applicant filed a proposal with the Basic Court in Prishtina (hereinafter: the Basic Court) seeking the annulment of the interim measure imposed by Decision [E.no.231/07] of 22 February 2007.

20. On 30 November 2017, the Basic Court, by Decision [C.no.929/15], rejected the Applicant's proposal for annulment of the interim measure on the ground that he is not a party authorized to submit a proposal, as he is not a party to the proceedings concerning the claim, and the status of the interfering party in the procedure has been revoked by the Decision of the Municipal Court of 29 January 2009.

21. The Applicant filed an appeal with the Court of Appeals against the Decision [C.no.929/15] of the Basic Court, on the ground of substantial violation of the contested procedure.

22. On 14 August 2018, the Court of Appeals, by Decision [Ac.no.534/18], rejected the Applicant's appeal as unfounded and confirmed the Decision [C.no.929/15] of the Basic Court.

23. On an unspecified date, the Applicant filed a revision with the Supreme Court against the Decision [Ac.no.534/18] of the Court of Appeals.

24. On 12 March 2019, the Supreme Court, by Decision Rev.no.47/019, rejected as inadmissible the Applicant's revision against the Decision [Ac.no.534/18] on the ground that *"according to the provision of Article 228 para.1 of the LCP, sides can present revision against verdict of absolute decree through which the procedure in court of second instance will finish. Taking this into consideration, revision is not allowed against the decision imposing the injunctive relief, as by such decision the procedure is not completed in the final form. The injunctive relief is a procedural decision that can be proposed before the initiation and during the process of court dispute and after its completion, until the execution is fully completed".*

**Applicant's allegations**

25. The Applicant alleges that the regular courts have violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 (Right to a fair trial) of the ECHR, when they have decided regarding the procedures of the regular courts which have dealt with his request seeking revocation of the interim measure concerning the disputed parcel.

26. In this regard, the Applicant alleges that he has requested in all judicial instances: a) the removal of the interim measure b) the photocopying of the documents; and c) the recognition of the status of the interfering party in the procedure in order to be able to protect his property.

27. The Supreme Court's stance, according to the Applicant, has produced a clearly arbitrary and irrational outcome, as the Applicant is aware that there is no final decision on the merits of the case, but the substance of the case is his right to interfere in a procedure where the issue of his property is being examined.

28. He claims to have reminded the Supreme Court of his constitutionally guaranteed right under Article 31 and Article 6 of the ECHR, also by calling upon the ECtHR cases *"Golder v. The United Kingdom and Al-Dulimi and Montana v. Switzerland"*. In this respect he also refers to the right to legal remedies, denial of access to court and violation of the principle of equality of arms, by citing several ECtHR cases, and requests from the Court to focus on the issue of recognition of the status of the interferer in the procedure.

29. The Applicant alleges that his participation in the procedure is not only a hope, but a "legitimate expectation" based on: 1) domestic law; 2) contract on sale 3) copy of plan; and 4) Decision C.no.35/04 of 5 June 2008, whereby he was allowed to interfere in the procedure.

30. The Applicant further alleges that the decision revoking his participation in the procedure due to his failure to attend court hearings was not served on him and as such has remained only in the minutes. The Applicant alleges that the Court in similar cases has decided in favour of the Applicant, as is the case of the Constitutional Court KI108/10, paragraph 74.

31. Finally, the Applicant requests that his case be declared admissible, a violation of the right to a fair trial be established; and the regular courts be ordered to allow the Applicant to interfere in the procedure, as well as his case be remanded to the Supreme Court for re-adjudication.

**Admissibility of the Referral**

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

33. 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."*

34. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 [Individual Requests] which provides:

Article 47 of the Law
[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."*

35. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Decision [Rev.no.47/2019] of the Supreme Court of 12 March 2019, after having exhausted all the legal remedies provided by the law.

36. However, the Court examines whether the criteria provided for by Article 49 [Deadlines] of the Law and Rule 39 [Admissibility Criteria], namely paragraph (1) (c) of the Rules of Procedure, are met. They provide as follows:

Article 49 of the Law
[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... ."*

Rule 39 of the Rules of Procedure
[Admissibility Criteria]

*"(1) The Court may consider a referral 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 Applican, and [...]."*

37. In view of what is stated above, the Court recalls that the 4 (four) month period starts from the "final decision" in the procedure of exhaustion of legal remedies by which the Applicant's request was rejected (see *mutatis mutandis*, the case of the Constitutional Court: KI120/17, Applicant: *Hafiz Rizahu*, Resolution on Inadmissibility, of 7 December 2017, paragraph 30, and the case of the ECtHR, *Paul and Audrey Edwards v. The United Kingdom*, No. 46477/99, Decision of 14 March 2002).

38. The Court also recalls that the Applicant must exhaust all legal remedies which are expected to be effective and sufficient. Only effective remedies can be taken into account by the Court, as an applicant cannot extend the strict time-limits provided by the Law and the Rules of Procedure, trying to exercise legal

remedies that are not allowed or by complaining to institutions which have no competence. to provide protection of the rights for which the Applicant is complaining (see, *mutatis mutandis*, the case of the Constitutional Court: KI120/17, Applicant: *Hafiz Rizahu*, Resolution on Inadmissibility, of 7 December 2017, paragraph 31, as well as the ECtHR case. of *Ferniek v. the United Kingdom*, No. 14881/04, Decision of 5 January 2006).

39. In this regard, the Court notes that the procedure against the Applicant conducted before the regular courts in relation to his request for revocation of the decision on interim measures, which also addressed his claim regarding the loss of his status as an interferer in the contested procedure, had been completed by the Decision of the Court of Appeals [Ac.no.534/18] of 14 August 2018, which confirmed the Decision of the Basic Court [C.no.929/15] of 30 November 2017, dismissing the Applicant's proposal for annulment of the interim measure, on the grounds that the Applicant is not an authorized party to submit such a proposal.

40. In this respect, the Court refers to Decision [Rev.no.47/2019] of the Supreme Court of 12 March 2019, which dismissed as inadmissible the Applicant's revision submitted against the Decision [Ac.no.534/18] with the reasoning that *"according to the provision of Article 228 para.1 of the LCP[Law on Contested Procedure , sides can present revision against verdict of absolute decree through which the procedure in court of second instance will finish. Taking this into consideration, revision is not allowed against the decision imposing the injunctive relief, as by such decision the procedure is not completed in the final form. The injunctive relief is a procedural decision that can be proposed before the initiation and during the process of court dispute and after its completion, until the execution is fully completed".*

41. The Court also refers to Article 228, paragraph 1, of the Law on Contested Procedure, which provides that:

> *"Article 228*
> *Revision against the verdict*
>
> *1. Sides can present revision against verdict of absolute decree through which the procedure in court of second instance will finish.*
> *[...]."*

42. The Court recalls that, in the Applicant's case, after the receipt of the Decision of the Court of Appeals [Ac.no.534/18] of 14 August 2018, nothing has prevented him from addressing the Constitutional Court. However, he used remedies, such as revision against the Decision [Ac.no.534/18], which was not provided by law.

43. Consequently, as a "final decision", pursuant to Article 49 of the Law is the Decision [Ac.no.534/18] of the Court of Appeals, of 14 August 2018, which rejected the Applicant's appeal submitted against the Decision [C.no.929/15] of the Basic Court, of 30 November 2017, which was final and non-appealable (see, *mutatis mutandis*, *Paul and Audrey Edwards v. The United Kingdom*, No.46477/99, ECtHR, Decision of 14 March 2002).

44. Therefore, the Court recalls that the Decision of the Court of Appeals [Ac.no.534/18] was issued on 14 August 2018. Although the Applicant has not stated the date of receipt of this Decision, based on the case facts it is clear that the time elapsed between the receipt of the decision and the date of submission of his Referral to the Constitutional Court, on 2 July 2019, exceeds the time period of 4 (four) months.

45. Consequently, the Court concludes that the Applicant's Referral with respect to the Decision of the Court of Appeal [Ac.no.534/18] was submitted after the legal deadline of 4 (four) months.

46. The Court recalls that pursuant to Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures the purpose of the four month deadline is to promote legal certainty by ensuring that cases concerning constitutional matters are dealt with within a reasonable time and to prevent the parties and other persons involved from being held in a state of uncertainty for a long period of time (see, mutatis mutandis, case *Sabri Güneş v. Turkey,* Application No. 27396/06, ECtHR Judgment, of 29 June 2012, paragraph 39; and, the case of the Constitutional Court no. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).

47. Therefore, on the basis of the aforementioned reasons, the Court concludes that the Applicant's Referral was submitted outside the legal deadline provided for by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, and as such it is inadmissible.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1)(c) of the Rules of Procedure, on 7 November 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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