



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

Prishtina, 18 February 2020  
Ref. no.:RK 1517/20

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

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI148/19**

Applicant

**Muharrem Rama**

**Request for constitutional review of Decision Rev. No. 123/2019 of the  
Supreme Court of Kosovo, of 8 May 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 Muharrem Rama from the village Syrigane (hereinafter: the Applicant), who is represented by Jahir Bejta, a lawyer from Skenderaj.

## **Challenged decision**

2. The Applicant challenges Decision Rev. No. 123/2019 of the Supreme Court of Kosovo, of 8 May 2019.
3. The challenged Decision Rev. No. 123/2019 of the Supreme Court was served on the Applicant on 6 June 2019.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged decision of the Supreme Court which allegedly violates the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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**

6. On 20 September 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 30 September 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 10 October 2019, the Court notified the Applicant's legal representative about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 16 January 2020, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

10. On 26 January 2016, the Applicant filed a lawsuit with the Basic Court in Mitrovica-branch in Skenderaj (hereinafter: the Basic Court), against the Government of the Republic of Serbia. In the lawsuit, the Applicant requested that the Government of the Republic of Serbia pay him, in the name of moral

and material damage sustained during the period 1998/1999, an amount of € 180,950.

11. On 27 January 2017, the Basic Court rendered Decision C. No. 27/2016, by which it was declared incompetent court to decide on this legal issue, while it rejected the Applicant's statement of claim. The decision of the Basic Court reads:

*„Article 18.3 of the Law on Contested Procedure (hereinafter: the CPC), determines that when the court finds in the course of the proceedings that the court is not competent for the resolution of the dispute but another state authority, then it will declare itself incompetent, annul all the procedural actions and dismiss the claim it was filed.*

*In this present case, the claimant sued a state in the court of the Republic of Kosovo and on this basis, this court finds that it does not have jurisdiction to decide a legal issue against another state.“*

12. The Applicant filed an appeal with the Court of Appeals on the grounds of essential violation of the provisions of the contested procedure.

13. On 8 February 2019, the Court of Appeals rendered Decision Ac. No. 1034/18, rejecting the Applicant's appeal as ungrounded. The reasoning of the decision of the Court of Appeals reads:

*„The legal assessment of the first instance court is fair pertaining that the court, throughout the proceedings, cares ex officio whether or not the dispute is within the jurisdiction of the court, as this duty is determined by the provision of Article 18, paragraph 1 of the LCP, which emphasizes that “If the court during the proceeding determines that jurisdiction over settling of the dispute is with a different state body and not with the court, it is announced its incompetence, all the procedural actions are declared invalid and the claim is dropped...“. In the present case, the first instance court acted in full compliance with the provision of Article 18, paragraph 3 of the LCP, which it rightly referred to.“*

14. The Applicant filed a request for revision with the Supreme Court against Decision Ac. No. 1034/18 of the Court of Appeals, on the grounds of essential violation of Articles 28, 47, 51, 60, and 61 of the LCP.

15. On 8 May 2019, the Supreme Court rendered Decision Rev. No. 123/2019, which rejected the Applicant's request for revision as ungrounded. The reasoning of the decision reads:

*„[...] regarding the erroneous application of the provisions of Articles 28, 47, 51, 60, 61, of the LCP. Thus, the provision of Article 28 of the LCP, which the claimant invokes and which determines the jurisdiction of our courts in disputes with an international (foreign) element, cannot be applied in the present case, due to the fact that it does not deal with natural persons and neither with foreign legal entities, but with a foreign country with which up to the present moment, the state of Kosovo in which*

*territory the damage was caused, has not concluded international agreements (bilateral, etc.) on the jurisdiction of the domestic courts for such disputes.*

*Also, in the present case, the allegation of the claimant's revision regarding the territorial jurisdiction settled under Article 47 and Article 51, as well as the subsidiary jurisdiction under Article 61 of the LCP, is ungrounded, as in the judgment of this court, these provisions have nothing to do with a specific civil law case and that in this context, the lower instance courts have rightly applied the provision of Article 18.3 of the LCP, taking into account the other reasons mentioned above."*

### **Applicant's allegations**

16. The Applicant alleges that the challenged decision of the Supreme Court violates his rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions], and Article 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR.
17. Specifically, the Applicant alleges *"that the Basic Court in Mitrovica - Branch in Skenderaj, the Court of Appeals of Kosovo in Prishtina and the Supreme Court, in their decisions, have erroneously interpreted the law applicable to territorial jurisdiction and, as a result, dismissed his statement of claim without provided him formal-legal possibility of dealing with it under the legal procedure, in accordance with the applicable law, the Constitution of the Republic of Kosovo, the case-law of the region as well as the international law."*
18. The Applicant further states that Article 21.2. of the Constitution *"protects and guarantees human rights and fundamental freedoms as provided by this Constitution, but in their decisions the courts have failed to comply with international standards on human rights, which provide an opportunity for the injured party to seek compensation for moral and material damage"*.
19. The Applicant also alleges that Article 22 of the Constitution provides *"that human rights and freedoms, which are enshrined in international agreements and instruments are guaranteed in the Constitution, and accordingly there has been a violation of Article 6 of the European Convention for the Protection of Fundamental Human Rights and Freedoms and the Universal Declaration of Human Rights, which provides for the right to a fair trial, if a violation of human rights occur."*
20. Further, the Applicant states that, having regard to the social context in Kosovo, the Constitutional Court must make a more detailed interpretation, applying the factual circumstances of this case within the scope of Article 53 of the Constitution. Also in accordance with Article 54 of the Constitution [Judicial Protection of Rights], everyone has the right to judicial protection in the event of a violation or denial of any right guaranteed by this Constitution, and the right to effective legal measures if it is established that the right has

been violated. „Therefore, I believe that as a claimant I have been denied the right to judicial protection as well as an institutional guarantee for the protection of citizens’ rights.“

21. The Applicant addresses the Court with a request, to approve his Referral as grounded, to annul all the decisions of the regular courts and to remand the case to the Basic Court for retrial, in accordance with the legal provisions in force.

### **Admissibility of the Referral**

22. The Court shall first examine whether the Referral has met the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
23. As an initial note, the Court notes that the subject matter of this referral and the allegations raised in this referral are similar to a number of other referrals on which the Court has already decided (See, *mutatis mutandis*, cases of the Constitutional Court, KI73/17, KI78/17 and KI85/17, *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 23 October 2017, cases KI97/17, KI99/17, KI115/17 and KI121/17 *Mala Mala, Ali Salihu, Nurije Beka and Xhevat Xhinovci*, Resolution on Inadmissibility of 10 January 2018 and Case 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, *Fehmi Hoti and 15 others*, Resolution on Inadmissibility of 19 February 2019, and all cases of “Ngritja e Zërit”; see also the relevant legal provisions cited in those cases).
24. Returning to the circumstances of the present cases, 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.”*

25. In addition, the Court also refers to the admissibility requirements as defined 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.”*

26. As to the fulfillment of these requirements, the Court finds that the Applicant filed the Referral in a capacity of an authorized party, challenging an act of a public authority, namely Decision E. Rev. No. 123/2019, of the Supreme Court of 8 May 2019, after exhaustion of all legal remedies provided by law. The Applicant has also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
27. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, which establishes:

*“(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.”*
28. Having regard to the Applicant's allegations, the Court finds that the Applicant actually considers that there has been a violation of both the rights guaranteed by Articles 21, 22, 31, 53 and 54 of the Constitution, as well as the rights guaranteed by Article 6 of the ECHR, because the regular courts by erroneously applying the LCP, rendered erroneous decisions by which were declared incompetent courts to decide on the case.
29. In fact, as a primary violation of the Constitution and the ECHR, in his Referral the Applicant emphasizes the fact that he did not have a fair trial, due to erroneous application of the law, while all the other violations arise as a concept of violation of the principles, rights and guarantees, which enable the right to fair and impartial trial.
30. Precisely in relation to that, the Court recalls that Article 53 [Interpretation of Human Rights Provisions] of the Constitution, obliges the Court that *„ Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

31. The Court finds that the primary questions to be answered to the Applicant's allegation are whether the courts by erroneous application of substantive law, more specifically, Article 18 of the LCP, which deals with the competence and territorial jurisdiction, violated the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 ECHR.

***Applicant's allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR pertaining to erroneous application of the substantive law***

32. In this regard, the Court notes that, according to the case law of the European Court of Human Rights (hereinafter: the ECtHR) and that of the Constitutional Court, it is not the duty of these courts to review the conclusions of the regular courts in relation to the factual situation and the application of the substantive and procedural law (see, the ECtHR Judgment, *Pronina v. Russia*, decision on admissibility of 30 June 2005, application no. 65167/01; see, in this regard, among other cases, the cases of the Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35, KI154/17 and 05/18 Applicants *Basri Deva, Afërdita Deva and Limited Liability Company "Barbas"* Resolution on Inadmissibility of 12 August 2019, paragraph 60, KI192/18, Applicant *Kosovo Energy Distribution and Supply Company*, KEDS jsc, Resolution on Inadmissibility, of 16 August 2019, paragraph 49).
33. In fact, the Constitutional Court is not competent to replace the regular courts in assessing the facts and evidence, but it is generally the task of the regular courts to assess the facts and evidence which they administered (see, the ECtHR case, *Thomas v. the United Kingdom*, Judgment of 10 May 2005, application no 19354/02 see also, *inter alia*, cases of the Court: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011, KI154/17 and 05/18 Applicants *Basri Deva, Afërdita Deva and Limited Liability Company "Barbas"*, Resolution on Inadmissibility of 12 August 2019, paragraph 61, KI192/18, Applicant, *Kosovo Distribution Company and Power Supply*, KEDS jsc, Resolution on Inadmissibility, of 16 August 2019, paragraph 50). It is the duty of the Constitutional Court to examine, if eventually, the constitutional rights (the right to a fair trial, the right to access to court, the right to an effective legal remedy, etc.) have been violated or neglected, as well as whether the application of law was, eventually, arbitrary or discriminatory.
34. Therefore, the Court will exclusively elaborate on the examination of the way in which the competent courts have applied the positive legal regulations, in cases when it is evident that in a certain procedure there has been an arbitrary course of action by the regular court, both in the procedure of establishing the facts, assessment of evidence and the application of relevant positive legal regulations.
35. In the light of the foregoing, the Court also recalls the ECtHR case-law where it emphasized that evident arbitrariness in the application of the relevant regulations can never lead to a fair trial (see, *mutatis mutandis*, European Court, *Andelković v. Serbia*, judgment of 9 April 2013 paragraph 24).

36. Referring back to the Applicant's specific case and allegations, the Court finds that the Applicant sued the Government of the Republic of Serbia in the Basic Court for moral and material damage, arising as a result of the events during the 1998/1999 period.
37. In this respect, the Basic Court by Judgment C. No. 27/2016, declared itself incompetent court to decide upon the statement of claim, pursuant to Article 18 of the LCP. The Court notes that the Court of Appeal has taken the same position, confirming the conclusion of the Basic Court by its decision.
38. In this regard, the Court recalls that Article 18 of the LCP reads:
- „18.1 The court, by its official duty, during the entire procedure safeguards whether the settlement of dispute is within the court jurisdiction or not.*
- 18.2 If the court during the proceeding determines that jurisdiction over settling of the dispute is with a different state body and not with the court, it is announced its incompetence, all the procedural actions are declared invalid and the claim is dropped.“*
39. Based on the foregoing, the Court does not find disputable the question of the application of the law in the case before the Basic Court and the Court of Appeals, because precisely in accordance with the legal provision of Article 18.1 of the LCP that the obligation of the courts throughout the proceedings to take care of their jurisdiction to decide the matter in question.
40. Likewise, the Courts do not find disputable the views of the Basic Court and the Court of Appeals that they are declared incompetent courts in the present proceedings, and that, accordingly, dismiss the Applicant's statement of claim and appeal because, during the “*processing of the matter*”, they found that they are incompetent courts in the present proceedings.
41. In this respect, the Court, having regard to the facts of the present case as well as the decisions of the Basic Court and the Court of Appeals, may conclude that the courts have directly applied the provision of Article 18 of the LCP, which provides that, when the court, during the proceedings concludes that the court is not competent for the resolution of the dispute but some other authority, then it will declare itself incompetent, annul all the procedural actions performed and dismiss the claim brought to it.
42. The Court further notes that the Applicant submitted to the Supreme Court a request for revision, alleging that the courts applied the erroneous legal provision of the LCP, in fact the Applicant stated that the courts should have applied Article 28 of the LCP, by which they are competent to decide on the case and not to apply Article 18 of the LCP.
43. The Court notes that Article 28 of the LCP regulates the issue of „Jurisdiction of courts in the international disputes“. The Court recalls that Article 28 of the LCP states:

*“28.1 The rules of international law apply regarding the competence of our courts for settlement of disputes of foreign citizens that enjoy immunity, foreign countries and international organizations.*

*28.2 The local court is competent to settle a dispute when its competence to settle a dispute which includes international elements is expressly determined by law or international contract.*

*28.3 If by our law or international contract there are no decisive provisions for competence of court for a certain type of disputes, the local court is competent to proceed for such disputes even when its competence derives from the provisions of this law on territorial jurisdiction of the local court.”*

44. The Court notes that the Supreme Court dealt with the Applicant’s appealing allegations regarding the applicability of Article 28 of the LCP. In this regard, the Court summarizes the findings of the Supreme Court regarding the procedure of revision as follows: *„In its decision, the Supreme Court concluded that the provision of Article 28 of the LCP, invoked by the Applicant and which determines the jurisdiction of domestic courts in disputes with an international (foreign) element, cannot be applied to his case, due to the fact that it is not about natural persons or foreign legal entities, but a foreign country with which Kosovo, in which territory the damage was caused, has not concluded any international or bilateral agreements on jurisdiction of the domestic courts for such disputes“.*
45. In addition, the Court also adds that Articles 37.1 and 38 of the LCP, provide for the general territorial jurisdiction of the court where the respondent’s residence or permanent residence is located when he is a natural person. Further, Article 39.1 of the LCP establishes that in the adjudication of disputes against Kosovo, a self-governing unit or any other territorial organization, the general territorial jurisdiction is vested in the court within whose territory is the headquarters of its assembly. Whereas, in paragraph 2 of this Article, it is provided that 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.
46. Moreover, the Court recalls the provision of Article 54.1 of the Law on resolving conflict of laws with the regulations of other countries stipulates that in property disputes, the jurisdiction of a local court exists if the property of the respondent or the item claimed by the action is situated in the country. Bearing in mind the abovementioned provisions, as well as the fact that by the lawsuit is sued the Republic of Serbia - the Government of the Republic of Serbia in Belgrade for compensation of damages, the Court finds that it is a legal property dispute with a foreign country, from which it follows that it is the dispute with foreign elements, in which the domestic courts they are not competent to decide.
47. Therefore, in the light of all the foregoing, the Court emphasizes that the Applicant’s allegations concerning the application of the law have been considered and explained by the regular courts, and that from the entirety of

the proceedings it does not follow that the regular courts acted in an arbitrary manner or that they interpreted, and therefore applied, the law in an arbitrary manner.

48. In the context of the foregoing, the Court also concludes that the Applicant's allegations of violation of Article 54 [Judicial Protection of Rights], of the Constitution, are ungrounded, since the Court may, on the basis of all of its findings, conclude that the Applicant in this court proceeding that he analyzed, had the judicial protection to the extent possible and foreseen at the given stage, taking into account the specifics of the statement of claim, which can be seen also on the basis of all the actions the courts have taken. Likewise, the Court could not have noted that the Applicant's judicial protection was limited or impeded by the decision of any authority (see the decision of the Court in case KI 159/18 Applicant *Azem Duraku*, Resolution on Inadmissibility, of 6 May 2019, paragraph 84).
49. In this regard, the Court concludes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR have not been violated, on the basis of which it follows that there has been no violation of Article 54 of the Constitution.
50. Therefore, in these circumstances, having regard to the Applicant's allegations and the facts presented by him, referring also to the standards established by the case law of the Court in similar cases and the ECtHR case law, as well as the principles of international law, the Court finds that the Applicant has not sufficiently proved and substantiated his allegations regarding violations of his rights and fundamental freedoms guaranteed by the Constitution and the ECHR.
51. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 16 January 2020, unanimously

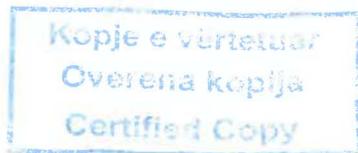
### DECIDES

- 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**

Bajram Ljatifi



Arta Rama-Hajrizi

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