



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

Prishtina, on 23 March 2020
Ref. no.:RK 1535/20

This translation is unofficial and serves for information purposes only

DECISION TO REJECT THE REFERRAL

in

Case No. KI192/19

Applicant

Naser Shala

Constitutional review of Decision CA.no.1802/2019 of the Court of Appeals, of 6 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 Naser Shala from Rahovec (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision CA.no. 1802/2019 of the Court of Appeals, of 6 May 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which according to the Applicant's allegation violated his rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 49 [Right to Work and Exercise Profession] and 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 6 (Right to fair trial) and Article 1 of Protocol no. 1 (Protection of property) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 24 October 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 31 October 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Ljatifi and Radomir Laban.
7. On 5 November 2019, the Court sent a copy of the Referral to the Court of Appeals of Kosovo and notified the Applicant about the registration of the Referral and requested from him to complete the Referral Form of the Constitutional Court of Kosovo, to clarify the Referral and to submit other necessary supporting documents.
8. On 11 November 2019, the letter of notification served on the Applicant was returned to the Court with the remark that the Applicant is not located at the address stated in his Referral submitted to the Court.
9. On 14 November 2019, the Court once again sent a letter of notification to the Applicant about the registration of the Referral and requested from him to complete the Referral Form of the Constitutional Court of Kosovo, to clarify the Referral and to submit other necessary supporting documents.
10. On 20 November 2019, the letter of notification sent to the Applicant was returned to the Court with the remark that the Applicant is not located at the address stated in his Referral submitted to the Court.

11. On 26 February 2020, having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 20 April 2018, [by Decision CP.no.258/2017] Basic Court in Gjakova-Branch in Rahovec confirmed that the Applicant, by carrying out earthworks, damaged the surrounding wall located on the parcel owned by his brother, who also filed a claim against the Applicant. By the same Decision, the Basic Court ordered the Applicant to stop and discontinue the works and obliged the Applicant to pay the costs of proceedings.
13. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court *“due to the essential violations of the provisions of the contested procedure.”*
14. On 29 June 2018, the Court of Appeals [by Decision Ac.no.2892/2018] approved the Applicant's appeal as founded, quashed the first instance decision in its entirety and remanded the case to the Basic Court for reconsideration.
15. On 15 January 2019, the Basic Court in Gjakova - Branch in Rahovec [by Decision CP.nr. 249/2018] in repeated proceedings again confirmed that the Applicant by carrying out earthworks had damaged the surrounding wall located on the parcel owned by his brother, who also filed a claim against the Applicant. By the same Decision, the Basic Court obliged the Applicant to have the surrounding wall restored to its former condition, and in the future to refrain from any suchlike obstacle.
16. On an unspecified date, the Applicant submitted an appeal to the Court of Appeals against the Decision of the Basic Court, *“due to erroneous and incomplete determination of the factual situation, erroneous application of substantive law.”*
17. On 6 May 2019, the Court of Appeals [by Decision AC.no.1802/2019] dismissed as unfounded the Applicant's appeal and confirmed the decision of the Basic Court in its entirety.

Applicant's allegations

18. In his statement before the Court, the Applicant alleged that the challenged decisions of the Basic Court and the Court of Appeals violated his rights guaranteed by Articles 22, 31, 46, 49 and 53 of the Constitution, as well as Articles 6 and 1 of Protocol no. 1 of the ECHR.
19. The Applicant, after explaining the chronology of how the regular courts have decided on his case, alleges a violation of the Constitution and the ECHR by stating that, *“By the Decision of the Basic Court [...] and Decision of the Court of Appeals Kosovo [...], the injustice and unilateral decision-making of the*

Court of Appeals of Kosovo have been legitimized. There was no reason at all to have the Trial Panel changed in the re-proceedings. That change brings into question the legality and legal certainty; the challenged decisions have also violated my constitutional rights and guarantees.”

20. In his Referral, the Applicant has provided the address at which the Court may contact him in relation to further proceedings in the case.

Admissibility of the Referral

21. 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.
22. 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”.

23. The Court also refers to Articles 22.4 and 48 of the Law, which provide:

Article 22 [Processing of Referrals]

4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim. The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim.

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.

24. Moreover, the Court takes into consideration the Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which provides:

“(2) The Referral shall also include

[...]

(h) the supporting documentation and information...”

25. The Court takes into consideration also the Rule 35(5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:
- “[...] The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral [...].”*
26. As to the fulfillment of these conditions, the Court notes that the Applicant alleges that his rights guaranteed by Articles 22, 31, 46, 49 and 53 of the Constitution, and Articles 6, 1 of Protocol No. 1 of the ECHR, have been violated.
27. Since the Applicant challenges the Decision AC. no. 1802/2019 of the Court of Appeals, the Court recalls that the Applicant is obliged to support these allegations with valid documents and to submit the completed official Referral Form of the Court, as well as evidence on the receipt of the challenged Decision of the Court of Appeals.
28. The Court recalls, first of all, that in the present case according to Article 22 of the Law, the Court has twice requested from the Applicant *“to complete the Referral Form of the Constitutional Court of Kosovo, to clarify the Referral as well as to provide further evidence on the receipt of the challenged Decision of the Court of Appeals.”*
29. The Court further notes that on the basis of the acknowledgment of the receipt, the Applicant was served the notification on 11 November 2019 and 20 November 2019, and that both notifications were returned with the remark that the Applicant did not reside at the address provided in the Referral.
30. The Court notes that the Applicant has not provided the correct address and failed to respond to the Court's request for the submission of the basic documentation, without which no public authority of the Republic of Kosovo can take any action.
31. The Court notes that it is not a fact-finding court and that the burden of proof lies with the Applicant who failed to meet the procedural requirements established by the Constitution, Law and Rules of Procedure (See, for example, case no. KIO3/15, Applicant *Hasan Beqiri*, Decision to Reject the Referral of the Constitutional Court of the Republic of Kosovo, of 5 June 2015).
32. Therefore, the Court notes that, in addition to his general and abstract Referral, the Applicant has not submitted to the Court any of the requested documents, although the Court has requested this twice from him.
33. Consequently, the Court finds that the Referral of the case is incomplete because the Applicant failed to state his address correctly and did not submit the supporting documents requested by the Court to prove his allegations.
34. In sum, the Court concludes that the Referral does not meet the procedural requirements for further consideration provided by Rule 35 of the Rules of

Procedure. Since the Applicant has not completed the Referral Form of the Constitutional Court of Kosovo and has not submitted the necessary documents, the Referral must be summarily rejected in accordance with Rule 35 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and Rules 29, 35 (5) of the Rules of Procedure, unanimously

DECIDES

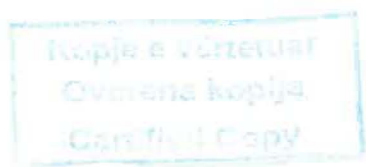
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



This translation is unofficial and serves for information purposes only