



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

Pristina, on 30 March 2020
Ref. no.:RK 1537/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI206/19

Applicant

Mladen Nikolić

**Constitutional review
of Decision Gž. No. 659/2017 of the Court of Appeals of 21 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 Mladen Nikolić, residing in the village of Koretishtë, Municipality of Novobërdë (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Decision Gž. No. 659/2017, of 21 May 2019, of the Court of Appeals, which was served on the Applicant on 18 July 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated the Applicant's rights contrary to Articles 478, 479 and 480 of Law No. 03/L-006 on the Contested Procedure (hereinafter: the LCP).
4. The Applicant did not accurately clarify what fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) he claims to have been violated by the challenged Decision.

Legal basis

5. 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 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 14 November 2019, the Applicant by mail service submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 26 November 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu dhe Selvete Gërxhaliu-Krasniqi (members).
8. On 6 January 2020, the Court notified the Applicant and the Court of Appeals about the registration of the Referral. On the same date, the Court sent to the Basic Court in Gjilan (hereinafter: the Basic Court), the request to submit the acknowledgment of receipt which proves the date when the Applicant was served with the challenged Decision.
9. On 16 January 2020, the Basic Court notified the Court that the Applicant was served with the challenged Decision on 18 July 2019.
10. On 26 February 2020, 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

11. On 24 April 2010, the Applicant filed a statement of claim with the Basic Court on the ground that L.G., by opening an entrance gate in his yard for the

transport of animal food, had prevented him from using the road in a peaceful and factual manner in the village of Koretishte, Municipality of Novobërdë, through which both had access to use and passage.

12. The Applicant in his statement of claim specifically requested the following: (i) to establish that L.G., in the capacity of the respondent (hereinafter: the respondent) at the end of March 2010 has prevented him from peaceful and factual use of the road crossing; (ii) to order the respondent to immediately return the previous situation of his property by removing the gate and building a wall instead; and (iii) the respondent be prevented in the future from obstructing the Applicant's peaceful use of this road under threat of coercion.
13. On 14 December 2016, the Basic Court by Decision P. No. 212/10 rejected as ungrounded all the Applicant's claims presented in his statement claim and obliged the Applicant to compensate the respondent for the costs of the contested procedure.
14. The Basic Court, *inter alia*, based on the testimony of the experts in the field and the evidence provided by the witnesses in the proceedings, held that the Applicant's statement of claim was ungrounded. The Basic Court reasoned that the Applicant, the respondent and other co-villagers have been using the same road since 1990-1991, implying that the respondent is also a co-possessor of this road. Consequently, the Basic Court held that the third persons have no right to prevent the respondent from using and crossing this road.
15. On an unspecified date, the Applicant filed appeal against Decision P. No. 212/10 of the Basic Court of 14 December 2016 with the Court of Appeals. In his appeal, the Applicant alleged violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, erroneous application of substantive law, and filed a complaint regarding the costs of the contested procedure.
16. On 21 May 2019, the Court of Appeals by Decision Gž. No. 659/2017 rejected the Applicant's appeal as ungrounded and upheld the abovementioned Decision P. No. 212/10 of 14 December 2016 of the Basic Court.
17. The Court of Appeals held that the assessment of the Basic Court is fair because there is no element of concern or taking of property of the Applicant in the respondent's actions. The Court of Appeals found that the built gate is in the respondent's property and that the parcel defined as a public road is also used by other neighbors, including the respondent. The Court of Appeals further specified that *"The first instance court did not properly review the legal basis and the right to property taking into account that the review of those issues was excluded in such a nature of the proceedings by the text of the law on property and real rights, in which both the parties persistently refer to"*.
18. On 23 August 2019, the Applicant filed a proposal to initiate a request for protection of legality with the Supreme Court against Decision P. No. 212/10 of 14 December 2016 of the Basic Court and Decision Gž. No. 659/2017 of 21 May 2019 of the Court of Appeals.

19. On 27 August 2019, the Office of the Chief State Prosecutor by letter KMLC No. 144/2019 notified the Applicant as follows: *“After reviewing your proposal and other case files, the Office of the Chief State Prosecutor notifies you that your proposal has not been approved, as there is no sufficient legal basis in this matter to file a request for protection of legality under Article 247 par. a) and item b) of the Law on Contested Procedure”*.

Applicant’s allegations

20. The Applicant did not specifically state any right guaranteed by the Constitution, which is allegedly violated by Decision Gž. No. 659/2017 of the Court of Appeals of 21 May 2019. He alleges that the challenged Decision contains violations of Articles 478, 479 and 480 of the LCP.
21. The Applicant essentially alleges that the Basic Court acted in contravention of the provisions of the LCP on the ground that after the submission of the statement of claim for obstruction of possession in 2010, the Basic Court decided on 14 December 2016. In this regard, the Applicant, referring to Article 479 of the LCP, alleges that the Basic Court has seriously violated this legal provision, which stipulates that disputes related to the obstruction of possession and other rights must be dealt with expeditiously. The Applicant specifies that the length of this proceeding caused the costs of the contested procedure.
22. In his Referral, the Applicant emphasizes the fact that the road was the property of his predecessors, in which case he claims to have submitted it as a fact before the regular courts. In this regard, the Applicant reiterates that this road is not the property of the respondent, and therefore, the latter has no right to use it. The Applicant alleges that the regular courts did not deal with the determination of “the history of the creation of this road”. In this regard, the Applicant alleges that the regular courts, by failing to determine the issue of obstruction to possession, acted in violation of Article 480 of the LCP.
23. The Applicant alleges that before the regular courts he alleged that *“[...] the constitutional right to private property, in its free possession and enjoyment, here of the respondent, has been violated, the “granted right” which neither he nor his predecessors have had and possessed, but through unlawful and usurped conduct by the said courts, have been “granted” the right, which in the justice system in Kosovo and beyond, is unknown and does not exist”*.
24. Finally, the Applicant requests the Court to hold a violation of the aforementioned provisions of the LCP and remand the case for retrial to the Basic Court.

Provisions of Law No. 03 / L-006 on Contested Procedure

Article 478

If there are no special provisions in this article then other provisions set by this law are applies.

Article 479

In contentious procedures because of possession refusal, especially in setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible, but each case will be looked into its nature and circumstances.

Article 480

Contentious procedures because of possession refusal charge has its limits only in the verification of the latest evidences and what kind of refusal is done. Exempt is the possibility on the examination of the property right, legal base, consciousness or unconsciousness of the possession. In these procedures exempt is the possibility to ask for the expenses caused by possession refusal.

Admissibility of the Referral

25. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law the Rules of Procedure have been met.
26. 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”.

27. The Court further examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...”.

28. The Court first notes that the Applicant has also submitted the notification to the Office of the Chief State Prosecutor. However, based on his Referral, the Court notes that the Applicant specifically challenges the decisions of the regular courts, namely Decision Gž. Nr. 659/2017 of 21 May 2019 of the Court of Appeals.
29. Therefore, with regard to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party challenging the act of a public authority, namely Decision Gž. No. 659/2017 of 21 May 2019 of the Court of Appeals, having exhausted all legal remedies provided by law. In this regard, the Applicant's Referral is in compliance with the criteria established in paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 of the Law.
30. The Applicant also submitted the Referral in accordance with the deadline established in Article 49 of the Law.
31. However, in assessing whether the Applicant has fulfilled the admissibility criteria laid down by law, the Court also refers to Article 48 of the Law, which stipulates the obligation on the Applicant to accurately specify in his referral submitted to the Court the rights and freedom he claims to have been violated.
32. The same criterion is clearly set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39, paragraph (1) (d), which provides:
 - (1) *The Court may consider a referral as admissible if:*
 - (d) *the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.*
33. Accordingly, the Court states that, in order to consider that a referral meets the admissibility requirements, the Applicant is obliged to accurately clarify in his referral what rights and freedoms he claims to have been violated and to adequately present the facts and allegations of violations of the constitutional rights or provisions. (See case KI91/17, *Enver Islami*, the Constitutional Court, Resolution on Inadmissibility, of 22 November 2018, paragraph 31).
34. The Applicant did not specify what rights and freedoms were allegedly violated by the challenged decision of the Court of Appeals, which he challenges before the Court. In addition, the Applicant does not accurately clarify the facts and allegations of violation of the constitutional rights.
35. In the circumstances of the present case, the Applicant's referral is in accordance with the criteria set forth in paragraphs 1 and 7 of Article 113 of the Constitution and Articles 47 and 49 of the Law. However, the Applicant's Referral does not meet the admissibility requirements as established in Article 48 of the Law and item d) of paragraph 1 of Rule 39 of the Rules of Procedure.
36. In conclusion, in accordance with Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, on 26 February 2020, unanimously

DECIDES

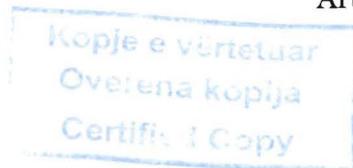
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Arta Rama-Hajrizi



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