



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

Prishtina, 6 March 2020  
Ref. no.:RK 1522/20

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

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI218/19

Applicant

**Shani Morina**

**Constitutional review of the Decision Ac.no.2451/19 of the Court of Appeals, of 2 July 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 Shani Morina, village Reshtan, Municipality of Suharekë (hereinafter: the Applicant).

### **Challenged decision**

2. The Applicant challenges the Decision Ac.no.2451/19 of the Court of Appeals of Kosovo, of 2 July 2019.
3. The challenged decision was served on the Applicant on 18 July 2019.

### **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

### **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No.03/L-121 (hereinafter: the Law) and Rule 29 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 3 December 2019, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 December 2019, the President of the Court, by Decision no. GJR. KI218 / 19 appointed Judge Selvete Gerxhaliu Krasniqi as Judge Rapporteur. On the same day, the President of the Court, by decision no. KSH. KI218/19 appointed the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 8 January 2020 the Court informed the Applicant about the registration of the Referral and sent a copy thereof to the Court of Appeals.
9. On 5 February 2020, the Review Panel after having considered the report of the Judge Rapporteur unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

10. On the basis of the case file it results that the Applicant in the proceedings before the ordinary courts appears in the capacity of one of the guarantors of „P.T.P. Agroeli” from Suharekë, which concluded a loan agreement with Raiffeisen Bank Kosovo. The claimant in accordance with the agreement, guaranteed with his property, that the Company "P.T.P. Agroeli“, will perform all its obligations to Raiffeisen Bank within the deadline.
11. On 2 October 2013, due to the non-performance of contractual obligations by „P.T.P. Agroeli”, Raiffeisen Bank, as a creditor, submitted a proposal for

enforcement to the Basic Court in Prizren-Branch in Suharekë (hereinafter: the Basic Court).

12. On 2 October 2013, the Basic Court issued the Decision CP.no.776/13 authorizing the enforcement.
13. The Applicant filed an objection with the Basic Court against the Decision Cp. no. 776/2013.
14. Acting in accordance with the decision on enforcement CP no.776/13, Raiffeisen Bank transferred the enforcement subject matter to the private enforcement agent .
15. On 14 April 2015 the Basic Court issued the Decision PPP.no.2013 dismissing the Applicant's objection as inadmissible.
16. The Applicant filed an appeal with the Court of Appeals against the Decision PPP no. 2013 of the Basic Court.
17. On 22 June 2016, the Court of Appeal issued the Decision Ac.no.1735/2015, whereby it quashed the decision of the Basic Court PPP.no.2013 of 14 April 2015, and remanded the case to the Basic Court for retrial. The reasoning of the decision reads: *“The first instance court could have held a public hearing in this case in order to fully understand the validity of the objection...”*
18. On 11 April 2019, the Basic Court issued a new Decision Pp.no.112/2019, whereby it partially approved the Applicant's objection concerning the interest rates, while it upheld the rest of the decision on enforcement Cp.No.776/2013 of the Basic Court.
19. The reasoning of the Basic Court's decision states: *“the creditor made his request sufficiently credible to assign the enforcement proposal pursuant to Article 22, paragraph 1, sub-paragraph 7 of the LEP. While the debtors could not deny such a claim by the creditor as they did not provide convincing evidence as required by Article 69 (4) of the ZIP, but empty and unproven argumentation in any respect, hence it was decided that they should also be denied the objection in this part in accordance with Article 73, paragraph 3 of the LEP, whilst the decision on setting the enforcement proposal shall remain in force”*.
20. The Applicant lodged an appeal with the Court of Appeals against the Decision Pp. no. 112/2019 of the Basic Court.
21. On 2 July 2019, the Court of Appeals issued the Decision Ac.no.2451/19, whereby it dismissed the Applicant's appeal as unfounded, whilst it upheld the Decision Pp. no. 112/2019 of the Basic Court in its entirety.
22. The reasoning of decision of the Court of Appeal states: *“The Court of Appeals assesses that the court of first instance on the basis of the evidence contained in the case file, has rendered a fair decision, because the decision is comprehensible and clear, therefore, the decision of the court in respect of this*

*matter is upheld also by the Court of Appeals, considering that the challenged decision did not contain essential violations of the provisions of the contested procedure referred to in Article 182, paragraphs 1 and 2 of the LCP, and that the factual situation was correctly determined, so that its legality can be examined and assessed, violations which the court of second instance examines ex officio pursuant to Article 194 of the LCP”.*

23. On 26 September 2019, the Applicant submitted to the Office of the Chief State Prosecutor (hereinafter: SP) a proposal to initiate the request for protection of legality against the decision of the Basic Court PP. no. 112/19 of 11 April 2019 and against the decision of the Court of Appeals AC. no. 2451/19 of 2 July 2019.
24. On 15 October 2019, the SP sent a notification to the Applicant reading: *“Having reviewed your proposal and other case file documents, the Office of the Chief State Prosecutor informs you that your proposal has not been approved because there is no sufficient legal basis in this matter for filing a request for protection of legality pursuant to Article 247, paragraph 247.1, items a) and b) of the Law on Contested Procedure”.*

### **Applicant’s allegations**

25. The Applicant states that the decisions of the Basic Court CP.no.7/13 of 2 October 2013, and Pp. no.112/2019 of 11 April 2019, as well as the decision of the Court of Appeals C. no. 2451/2019 of 2 July 2019, and the notification of the SP, are in contradiction with Article 31 of the Constitution, which guarantees a fair and impartial trial.
26. More specifically, the Applicant considers that the Basic Court in its decisions did not take into account at any time the claims of the debtor and that it has decided in a biased manner in relation to their claims, when deciding unilaterally in substantive aspect, and there were have been mistakes to the detriment of the debtor in procedural aspect, as well.
27. Likewise, the Court of Appeals did not thoroughly analyze the case and, despite all the arguments provided in the appeal, it also failed to consider and decide on the debtor's request to suspend the matter in question pending the conclusion of the civil proceedings ongoing before the Basic Court in Prishtina - Department for Commercial Matters between Raiffeisen Bank and “PTP Agroeli”.
28. Further, the Applicant claims that the SP in his decision KLC. no. 162/2019 of 15 October 2019, failed to provide any specific details, by only referring that there was no sufficient basis to initiate a request for the protection of legality before the Supreme Court of Kosovo.
29. Accordingly, the Applicant is addressing the Court with a request to oblige the Court of Appeals to modify the decision of the court of first instance or remand the case for retrial, or alternatively the SP to approve the proposal for initiation of the request for protection of legality.

## Admissibility of the Referral

30. 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.
31. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes:

*“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”.*
32. In addition, the Court examines whether the Applicant has submitted the Referral within the prescribed period, by referring to Article 49 of the Law, which provides: *“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force”.*
33. In order to determine whether the Applicant has submitted the Referral within the prescribed deadline of 4 (four) months, the Court refers to the date of receipt of the last decision by the Applicant and the date of submission of the Referral to the Constitutional Court.
34. “Last Decision” within the meaning of Article 49 of the Law is of course the last decision rejecting the Applicant's appeal (See, *mutatis mutandis*, *Paul and Audrey Edwards v. The United Kingdom*, No. 46477/99, ECtHR, decision of 14 March 2002). The deadline starts to run from the day the decision became final as a result of exhaustion of adequate and effective remedies to ensure the correction of the subject matter of the appeal (See, *mutatis mutandis*, *Norkin v. Russia*, Application 21056/11, ECtHR, Decision of 5 February 2013, and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999.).
35. As to the request for the protection of legality submitted to the State Prosecutor, the Court notes that this is a remedy not directly available to the claimant but a remedy that depends on the “mediator”, and in the specific case, the “mediator” is the State Prosecutor, and as such it is not considered by the Court (See *Tanase v. Moldova* [VV], para.122, also the Case KI184/18, Applicant: *Iilir Gashi*, Resolution on Inadmissibility of 26 August 2019 , paragraph 49).
36. Based on the foregoing reasons, the Court considers that the last decision in this case was in fact the decision [Ac.No.2451 / 19] of the Court of Appeals, of 2 July 2019 and that the deadline starts to count from the date of receipt of the said decision by the Applicant's representative or the Applicant himself (See, *Bayram and Yildirim v. Turkey*, Application no.38587/97, ECtHR, decision of 29 January 2002) and that he cannot take into account the notification of the Chief State Prosecutor.

37. Accordingly, on the basis of the submissions it results that the Applicant received the decision Ac. no.2451/19 of the Court of Appeals on 18 July 2019, which can be confirmed from the acknowledgment of the receipt submitted to the Court, whereas the Applicant submitted his Referral to the Court on 3 July. December 2019 (see, inter alia, Resolution on Inadmissibility of the Constitutional Court KI201/13, Applicant: *Sofa Gjonbalaj*, of 17 April 2013, as well as Resolution KI143/19 *Agim Thaqi* of 16 January 2020).
38. In circumstances when the request is out of time, the Court cannot consider the allegations made in relation to the alleged violations of Article 31 of the Constitution.
39. In the light of the foregoing it results that the Referral was not filed within the deadline prescribed by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and therefore must be declared inadmissible on the ground that it is out of time.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.1 and 7 of the Constitution, Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, in the session held on 5 February 2020, unanimously

**DECIDES**

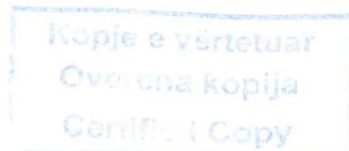
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gerxhaliu- Krasniqi

Arta Rama-Hajrizi



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