



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

Prishtina, 9 March 2020  
Ref. no.:RK 1527/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI57/18**

Applicant

**Hajriz Ferizi**

**Constitutional review of Decision Ac. No. 5434/2012, of the Court of Appeals of Kosovo of 14 February 2018**

**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 Applicant is Hajriz Ferizi from Mitrovica (hereinafter: the Applicant) who before the Court is represented by Safet Voca, a lawyer from Mitrovica.

## **Challenged decision**

2. The Applicant challenges the constitutionality of Decision Ac. No. 5434/2012, of the Court of Appeals of Kosovo, of 14 February 2018.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention for the Protection of 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, 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).
5. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

## **Proceedings before the Constitutional Court**

6. On 12 April 2018, the Applicant submitted the Referral through the mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 18 April 2018, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu and Gresa Caka-Nimani.
8. On 25 April 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals of Kosovo.
9. On 16 June 2018, the term of office of the Judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the term of office of the judges: Altay Suroy and Ivan Čukalović ended.
10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

11. On 22 August 2018, the President of the Court rendered the decision to replace Judge Altay Suroy, whose terms of office ended, and instead appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur.
12. On 11 February 2019, instead of Judge Almiro Rodrigues, whose terms of office ended, by Decision No. Ksh. KI57/18 on replacement of the Review Panel, appointed Arta Rama-Hajrizi as Presiding of the Review Panel.
13. On 5 February 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

14. Based on the case file, the Applicant Hajriz Ferizi in the city of Mitrovica in the capacity of a constructor was constructing, on "Ataturku" Street, on the cadastral parcels No. 408/2, 408/3, 408/4, 408/5, 409/2 and 409/3, a multi-storey business building (B + P + 8), for which in the name of land regulation was obliged to pay the set fee to the Municipality of Mitrovica.
15. On 16 May 2012, the Municipality of Mitrovica - Directorate of Planning and Urbanism issued a Conclusion finding that the Applicant did not make the remaining payment of compensation in the amount of € 49,078.58 within the prescribed term, in the name of the regulation of the construction land.
16. On 18 September 2012, the Municipality of Mitrovica, as a creditor, filed a request for enforcement against the Applicant based on the Conclusion of 6 May 2012. The request also provided the supporting documents claiming the authenticity of the debt of the Applicant to the Municipality.
17. On 26 October 2015, the Basic Court in Mitrovica rendered Decision E. No. 560/2012 which allowed the execution in this legal matter.
18. On 31 August 2016, the Applicant filed an objection against the Decision allowing the enforcement in the Basic Court in Mitrovica.
19. On 2 December 2016, the Basic Court in Mitrovica rendered Decision E. No. 560/2012, which *"REJECTED in entirety as ungrounded the objection of the debtor: Hajriz Ferizi from Mitrovica, filed against the decision E. No. 560/2012 on allowing the execution of 26.10.2015"*.
20. On 16 December 2016, against Decision E. No. 560/2012 of 2 December 2016, the Applicant filed an appeal with the Court of Appeals on the grounds of essential violation of the provisions of the enforcement proceedings, erroneous and incomplete determination of factual situation and erroneous application of substantive law.
21. On 12 May 2017, the Court of Appeals in Prishtina, by Decision Ac. No. 4872/16, approved the Applicant's appeal as grounded and annulled Decision E. No. 560/2102 of the Basic Court in Mitrovica, and remanded the case for retrial to the first instance court.

22. On 15 June 2017, the Basic Court in Mitrovica, acting on the objections given in the Decision of the Court of Appeals, issued Conclusion E. No. 560/2012 ordering the creditor - Municipality of Mitrovica to bring in the court within 7 days the Conclusion of 16 May 2012 (the document for which the court was requested permission to execute) in the original or a certified copy with a stamp of validity.
23. On 25 October 2017, the Basic Court in Mitrovica, in the retrial proceedings, rendered Decision E. No. 560/2012, rejecting in entirety the objection of the Applicant filed against the decision of this court, which allowed the enforcement of the Conclusion of the Municipality of Mitrovica.
24. On 26 October 2017, the Applicant filed an appeal with the Court of Appeals against Decision E. No. 560/2012 of the Basic Court in Mitrovica on the grounds of essential violation of the provisions of enforcement proceedings and erroneous application of substantive law.
25. On 14 February 2018, the Court of Appeals of Kosovo, by Decision Ac. No. 5434/2017, rejected the appeal as ungrounded and upheld the decision of the first instance court in entirety.
26. On 15 March 2018, the Applicant filed a request for protection of legality with the State Prosecutor's Office of Kosovo.
27. On 30 March 2018, the Office of the Chief State Prosecutor by notification KMLC No. 43/2018 notified the Applicant that it did not find sufficient legal basis to file a request for protection of legality.

### **Applicant's allegations**

28. The Applicant alleged that the regular courts violated the right to equality before the law (Article 24) and the right to fair and impartial trial (Article 31) of the Constitution in conjunction with the right to a fair trial (Article 6) of the ECHR.
29. The Applicant alleges that the regular courts did not address his main allegations regarding the fact that the Conclusion of the Municipality, on the basis of which the enforcement was allowed by the Basic Court in Mitrovica, was not a valid legal document to be qualified as an executive title, as well as the fact that the monetary obligation required by the Municipality had already been prescribed.
30. The Applicant further stated that the Basic Court in Mitrovica, in the retrial of the case in the enforcement procedure, did not take into account at all the findings of the Court of Appeals and that, always according to the Applicant, both the Decisions of the Basic Court in the two cases are almost identical. The Applicant also stated that he should have benefited from the Law on Pardons and that in fact, according to him, the required debt should not be calculated at all.

31. The Applicant requested the Court to declare the Referral admissible, to hold the alleged violations of the provisions of the Constitution and the ECHR, and to annul Decision Ac. No. 5434/2017 the Court of Appeals of 14 February 2018.

**Relevant constitutional and legal provisions applicable in the present case**

32. The Court notes that the Applicant specifically alleges that Decision Ac. No. 5434/2017 of the Court of Appeals of 14 February 2018 violated the right to equality before the law and the right to fair and impartial trial, as established in Articles 24, namely 14 of the ECHR and 31 of the Constitution, and the right to a fair trial as set out in Article 6 of the ECHR having the following content:

**Article 24 [Equality Before the Law]**

1. *“All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.”*

**Article 14 [Prohibition of discrimination]**

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

**Article 31 [Right to Fair and Impartial Trial]**

*1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

**Article 6 of the ECHR [Right to a fair trial]**

*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

[.....]

## **Law on Enforcement Procedure (Law No. 04/L-139)**

### **Article 4 Initiation of procedure**

1. *The enforcement procedure shall be initiated through creditor's proposal.*
2. *The enforcement procedure shall be initiated by the court ex officio, when that is foreseen by the law.*

### **Article 36 Certificate of enforceability**

1. *The proposal for enforcement shall be submitted to the enforcement body accompanied with the enforcement document, in original or certified copy, with enforceability certificate for enforceability.*

### **Article 38 Enforcement proposal**

1. *Enforcement proposal should contain the request for enforcement which shows the original enforcement document, or a copy certified by law, or authentic document based on which the enforcement is requested, claimant of enforcement and debtor, address of residence – place of stay or business seat of the creditor and debtor, credit claimed for settlement, and also the means through the which the enforcement should be conducted, the enforcement object if known, and other data needed for application of enforcement.*

### **Article 67 Regular legal remedies**

1. *In the enforcement procedure, regular legal remedies are:*
  - 1.1. *objection, and*
  - 1.2. *Complaint.*

### **Article 73 Decision on objection**

2. *The decision on objection shall be issued by a single judge.*

### **Article 77 Appeals against the decision on the objection**

1. *Against the decision on objection parties have the right on appeal.*

2. *The appeal against the decision on objection shall be filed through the first instance court for the second instance court within seven (7) days from the day of acceptance.*

### **Admissibility of the Referral**

33. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, as further specified in the Law and the Rules of Procedure.

34. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], 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.”*

35. The Court also takes into account Article 48 of the Law, which provides:

*“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.”*

36. Finally, the Court also refers to Rule 39 [Admissibility Criteria] 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.”*

37. The Court finds that the Applicant’s Referral fulfills the criteria of Article 113.7 as to the authorized party and the exhaustion of legal remedies; that the Referral was filed within the time limit of Article 49 of the Law, as specified by the legal provisions, which were allegedly violated, therefore, the Court shall further examine whether the Applicant has fulfilled the criteria set out in Rule 39 of the Rules of Procedure.

38. The Court recalls that in accordance with Article 53 [Interpretation of Human Rights Provisions] *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”* [ECHR], therefore, in considering the cases before it, the Court refers to the case law of the ECtHR.

39. The Court notes that the legal case to which the Applicant was a party started with the Conclusion of the Municipality of Mitrovica of 16 May 2012, according to which the Applicant was ordered to pay the Municipality an amount of money in the name of the outstanding debt for the regulation of construction land on which the Applicant had constructed a multi-storey building.

40. The Applicant alleged that the regular courts violated the right to equality before the law as well as the right to fair and impartial trial when deciding in the legal case to which the Applicant was a party.

*With regard to Article 31 of the Constitution in conjunction with Article 6 of the ECHR*

41. The Court initially notes that the Applicant justifies the allegation of a violation of the right to fair and impartial trial that the courts did not deal with the allegations filed by him.
42. In this case, the Court notes that the failure to address or eventually deal with the substantive allegations of the Applicants are constituent elements of the right to a reasoned court decision, which are part of the guarantees of Article 31 of the Constitution and Article 6 of the ECHR, and in this regard are also dealt with by the Court (see, *inter alia*, Judgments of the Court in the cases: KI135/14 of 8 February 2016; KI18/16 of 13 July 2016; KI22/16 of 2 May 2017; KI24/17 of 19 July 2019, KI35/18 of 6 January 2020, Resolution in case KI143/16 of 8 June 2018).
43. The Court has consistently emphasized that during the consideration of the Referral with allegation of violation of the right to fair and impartial trial, it assesses whether the proceedings were fair and impartial in their entirety, as required by Article 31 of the Constitution (see, among other. *mutatis mutandis*, *Edwards v. the United Kingdom*, 16 December 1992 see, also, Resolution on Inadmissibility of the Court in case KI85/16 of 13 September 2016, Applicant *Esat Haxhiu*, paragraph 25).
44. The Court notes that the Applicant also filed before the regular courts the allegations raised before the Court, such as the issue of the Conclusion of the Municipality as an executive title and an enforcement act, as well as the issue of statutory limitation of the Municipality's claim in respect of monetary liability required by the Applicant. In this regard, the Court finds that the Applicant's legal case was the subject of review twice in the first instance court and twice in the Court of Appeals.
45. The Court finds that the Basic Court in Mitrovica, by Decision E. No. 560/2012 of 25 October 2017 (in the retrial proceedings), decided to reject the Applicant's objection, reasoning that the creditor had submitted the original document at the request of the Basic Court, with stamp of finality. The Basic Court thus responded to the Applicant's allegation regarding the admission of the Conclusion of the Municipality as a valid enforcement document, therefore, the allegation that the issue of the Municipality's Conclusion as an enforcement act was not addressed by the court, is ungrounded.
46. The Court notes that, with regard to the Applicant's allegation as to the legal nature of the enforcement document, the Court of Appeals in Decision AC. No. 5434/2017, which finally decided the merits of this legal case, reasoned that: "*this allegation is ungrounded because the court determines the execution only based on the execution title under Article 23 of the Law on Enforcement Procedure, and in the present case an execution title is the conclusion given in*



*the administrative procedure. And further “the provision of Article 23, par. 2 of the LCP explicitly defines that: the decision of the administrative body, according to this law, is considered decision and conclusion reached in administrative proceedings by the administrative body or service or by the legal person charged with public authorizations”.*

47. In the light of the foregoing, the Court of Appeal stated in the reasoning of the decision that *“in this case, the conclusion is given in administrative procedure by the authority with public authorizations”.*
48. The Court also notes that the Court of Appeals also considered the Applicant’s allegation regarding the statutory limitation of the request and found: *“Regarding the appealing allegations that the prescription has been achieved in the enforcement matter, this allegation is ungrounded because based on the case file, the conclusion was issued on 16.05.2012 and was allowed by the court on 18.09.2012, under Article 144, par. 3 of the Law No. 05/L-031 on the general administrative procedure. An administrative act shall not be enforced after 5 (five) years from the date on which the administrative act has become enforceable and no enforcement action has been undertaken or if the last enforcement action was undertaken more than 3 (three) years ago, based on these facts, the creditor has filed the proposal within the legal deadline”.*
49. In conclusion, the Court finds that both the Basic Court and the Court of Appeals have dealt with the Applicant’s substantive allegations and, by applying the applicable law, have responded to those allegations. The Court further finds that the court decisions in their essence are not arbitrary, as well as the court proceedings in their entirety are not indicative of any constitutional violation.
50. The Court further recalls that based on the principle of subsidiarity, it cannot take the role of the fourth instance court and does not adjudicate on the final outcome of the judicial decisions (see *Fc Mretibi v. Georgia*, paragraph 31, Judgment of the ECtHR, of 31 July 2007, see, also, Resolution of the Court in case KI23/17 of the Applicant *Hasim Eljami*, of 11 January 2018) .

*With regard to Article 24 of the Constitution in conjunction with Article 14 of the ECHR*

51. The Court notes that the Applicant has not substantiated by any evidence the alleged inequality before the law. He failed to prove that he was not provided with equal legal protection or that on whatever grounds he may have been discriminated against, which are the fundamental requirements of Article 24 of the Constitution. Moreover, the Applicant has only mentioned this constitutional norm in the Referral but has not provided any reasoning under what conditions and circumstances it may have been violated.
52. The Court reiterates that for the purpose of interpretation of Article 24 of the Constitution and Article 14 of the ECHR, a difference in treatment is unequal and arbitrary, only if: 1) it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim, or 2) if there is not a reasonable relationship of proportionality between the means employed and

the aim sought to be realized (see, *mutatis mutandis*, *Abdulaziz, Cabales and Balkandali v. United Kingdom*, applications no. 9214/80; 9473/81 and 9474/81, 24 April 1985, paragraph 72)".

53. Based on the circumstances of the present case, the Court does not find that the decisions of the courts are indicative of the alleged violation of Article 24 of the Constitution. In this case, the Applicant's allegations of a violation of equality before the law are manifestly ill-founded on constitutional basis.
54. The Court further notes that the Applicant has only submitted as a fact the notification of the Chief State Prosecutor notifying that the Office of the Chief Prosecutor, and that the latter did not find sufficient evidence to file a request for protection of legality in this legal matter, but specifically the Applicant did not challenge this legal act.
55. The Court therefore concludes that the Referral is not reasoned on constitutional basis and that the Applicant has not in any way proved or substantiated by evidence the allegation of violation of a constitutional right; therefore, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is to be declared inadmissible as manifestly ill-founded.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 5 February 2020, unanimously

### **DECIDES**

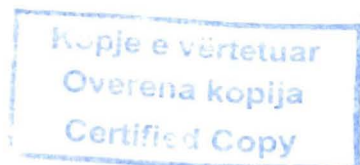
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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