



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

Prishtina, on 4 May 2020
Ref. no.:RK 1554/20

This translation is unofficial and serves for information purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No. KI14/20

Applicant

Armend Thaqi

**Constitutional review of Decision Rev. no. 425/2019 of the Supreme
Court of Kosovo, of 10 December 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 Armend Thaqi, residing in the village of Balincë, Municipality of Malishevë, represented by Ekrem Agushi, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Decision Rev. no. 425/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 10 December 2019, whereby his revision filed against the Decision Ac. no. 2630/19 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), of 24 July 2019 was rejected as unfounded.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on 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 the 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

5. On 17 January 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 23 January 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of judges: Radomir Laban (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
7. On 29 January 2020, the Court notified the Applicant's representative about the registration of the Referral and requested from him to submit to the Court the authorization proving that he represents the Applicant before the Court.
8. On 4 February 2020 the Court received the requested authorization from the Applicant's representative.
9. On 5 February 2020 the Court notified the Supreme Court about the registration of the Referral.

10. On 15 April 2020 the Review Panel reviewed 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 15 October 2011, the Applicant had an accident at the premises of Company "I" in Ferizaj (where he had gone to buy vehicle tires) on which occasion he allegedly suffered bodily injuries. The Applicant alleges that his injury at the premises of Company "I" occurred as a result of the said Company's failure to take appropriate safety measures within the business facility.
12. On 26 April 2012, the Applicant had filed a claim against Company "I" in the Basic Court in Ferizaj (hereinafter: the Basic Court), for compensation of damages suffered as a result of the above accident.
13. On 21 March 2019, the Basic Court, by Judgment C.no.795 / 15, decided that the Applicant's claim was considered withdrawn as neither the Applicant (as the claimant) nor his representative, despite being duly notified, had not participated in the main trial in connection with the claim (21 March 2019, at 9:00h) and had not justified their absence.
14. On 26 March 2019, the Applicant's representative submitted a proposal to the Basic Court for return to the previous situation, with the justification that on the same day when the hearing in the Basic Court had been scheduled he was summoned also to the Basic Court in Prishtina – Branch in Lipjan regarding another case, besides he was not in a good health condition. Therefore, he requested from the Basic Court to avoid harmful consequences as a result of declaring his claim withdrawn and to make possible the *"realization of the right to a fair and legal trial"* guaranteed by the ECHR.
15. On 27 March 2019 the Basic Court, through Judgment C.no.795 / 15, rejected the proposal to return to the previous situation on the grounds that the legal conditions for rejecting the request for return to the previous situation had been met. This Court reasoned that the Applicant's representative despite being aware of the hearing which was to be held at the same time in the Basic Court in Prishtina - Lipjan Branch, failed to notified the Basic Court in Ferizaj that he would be absent from the hearing on 21 March 2019 even though he had sufficient time to do so. Whilst, as regards the medical proof presented by the Applicant's representative that he was not in good health, the Basic Court had stated that the Applicant's representative had appeared on the same day in the Basic Court in Ferizaj at 13:00h. There they asked him if the scheduled hearing would be held at 9:00h, and he replied that he had had another hearing on the same day at the Basic Court in Pristina - Lipjan Branch and did not state that he had been to the doctor.
16. The Applicant's representative appealed to the Court of Appeals against the Decision C.no.795 / 15 of the Basic Court, of 27 March 2019, because of substantial violations of the provisions of the contested procedure, alleging that

the Basic Court had not properly assessed the grounds of his absence in the hearing of 21 March 2019.

17. On 24 July 2019, the Court of Appeals, by Judgment Ac. No.2630/19, rejected as unfounded the appeal filed by the Applicant's representative and confirmed the Decision of the Basic Court C.no.795/15, by upholding the reasoning of the Basic Court.
18. The representative of the Applicant submitted a revision to the Supreme Court, against the Decision Ac.no.2630/19 of the Court of Appeals, due to the substantial violation of the provisions of the contested procedure.
19. On 10 December 2019, the Supreme Court, through Judgment Rev.no.425/2019, rejected as unfounded the revision, filed against the Decision of the Court of Appeals Ac.no.2630/19.

Applicant's allegations

20. The Applicant alleges that the challenged decision of the Supreme Court has violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution , in conjunction with Article 6 (Right to a fair trial) of the ECHR.
21. The Applicant relates his allegations regarding the violations of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, as well as the right to judicial protection of rights guaranteed by Article 54 of the Constitution to the violations of the legal provisions of the contested procedure by the regular courts. According to the Applicant, the regular courts have violated the constitutional rights in question when deciding on the Applicant's right to return to the previous situation, related to the Decision C.no.795/15 of the Basic Court, of 21 March 2019, whereby the Applicant's claim was considered withdrawn since the Applicant representative had not participated in the hearing of 21 March 2019.
22. In this regard, the Applicant alleges that he has provided sufficient evidence as to the reasons which influenced his representative not to be able to attend the hearing of 21 March 2019, in the Basic Court, emphasizing that on the same day he was summoned to the Basic Court in Prishtina – Branch in Lipjan, in connection with another case and that he was also in a bad health condition, which can be verified based on the doctor's proof. He emphasizes that these reasons have not been taken into account by the Basic Court, although this absence could have not been avoided by the Applicant's representative. Therefore, the Applicant alleges that the Basic Court has erroneously applied the provisions of Article 423 of the Law on Contested Procedure and thus violated the right to a fair and reasonable trial.
23. The Applicant further argues that *"on the basis of the certificate of the Basic Court in Prishtina-Branch in Lipjan as well as the medical report dated 20.03.2019 it is confirmed that on 21.03.2019 [the representative of the*

Applicant] has appeared before the Basic Court in Prishtina-Branch in Lipjan in a health condition as ascertained in the medical report, for the session scheduled on 21.03.2019 at 10:00h, concerning the civil case, C.nr. 552/17 [...], only to prove the subjective impossibility to attend the hearing, but this hearing session scheduled by the case judge was not held [...] and thereupon being in the same state of health the claimant's authorized representative assisted and accompanied by attorney A.H. [...], (who drove his personal car from Lipjan to Ferizaj) has set out to the Basic Court in Ferizaj, on which occasion he has reported to the office Judge M.F. in order to inform him and justify his absence in the session of 21.03.2019 at 9:00h."

24. Further, the Applicant alleges that the Basic Court and the Court of Appeals, in their decisions, have presented erroneous legal interpretations and that there are inconsistencies between the reasons presented and the content of the documents (medical report) which are attached to the request for return to the previous situation, errors which were not eliminated even by the Supreme Court. He also alleges that all these violations are a result of successive and very harmful actions for the Applicant *"by the judge [M.F.] who has created a very incorrect and harmful practice for the parties by issuing such court decisions"* with which violate the provisions of Article 6 of the ECHR.
25. Finally, the Applicant requests from the Court to ascertain violations of his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR, whilst the Judgment Rev. no. 425/2019 of the Supreme Court, of 10 December 2019, Judgment Ac. no. 2630/2019 of the Court of Appeals, of 24 July 2019, Judgment C.no.795/15 of the Basic Court, of 21 March 2019 and Judgment C.no.795/15 of the Basic Court of 27 March 2019, *"to be quashed and the case to be remanded for retrial."*

Relevant legal provisions

Law No. 03/L-006 on Contested Procedure

"Article 129

*129.1 when the party does not take part in the proceeding or misses the due date for completion of any procedural action and due to this it loses the right to complete the procedural action bound to the prescribed period of time, the court may permit this party to complete this action with delay if there are reasonable circumstances which can not be determined or avoided.
[...]*

Article 423

[...]

423.3 If the plaintiff does not come to the main hearing session even though he's been summoned regularly, it is considered that he/she has dropped the charges except if the plaintiff declares that he/she requests the process to continue in his/her absence.

[...].”

Admissibility of the Referral

26. 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.

27. 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.”

28. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements specified by Articles 47 [Individual Requests], 48 [Accuracy of the Referral], and 49 [Deadlines] which provide:

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 [...].”

29. As to the fulfillment of the above criteria, the Court finds that the Applicant is an authorized party; has exhausted the available legal remedies; has clarified the act of the public authority whose constitutionality he is challenging and the

constitutional rights which he claims have been violated; and has submitted the Referral within the legal deadline.

30. In addition, the Court must also consider whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure stipulates that:

“(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.”

31. In this respect, the Court recalls that the Applicant claims a violation of his constitutional rights, namely the right to fair and impartial trial guaranteed by Article 31 of the Constitution and the right to judicial protection of his rights guaranteed by Article 54 of the Constitution.
32. In this regard, the Applicant complains that the regular courts had not properly administered the legal provisions relating to the right to return to the previous situation, despite the fact that he had provided sufficient evidence to prove the impossibility of his representative to participate in the session of 21 March 2019, where the Applicant's claim was reviewed.
33. The Court considers that despite the fact that the Applicant calls upon the violation of his constitutional rights; in essence he raises issues of application of law. This, in connection with the assessment of whether the foreseen legal criteria for returning to the previous situation have been met, as a result of the impossibility of the Applicant's representative to participate in the hearing in relation to his claim, on which occasion the Basic Court had considered his claim withdrawn.
34. Regarding these allegations, the Court recalls the reasoning of the Basic Court, through Judgment C.no.795/15 of 27 March 2019:

“The [Basic] Court, having reviewed the submission of [the Applicant's representative] that there has been scheduled a hearing [...] also in the Basic Court in Prishtina- Branch in Lipjan [...] for date 21.03.2019 at 9.00h [...] has come to the conclusion that this evidence is not founded, since the acknowledgment of receipt by the Basic Court in Prishtina –Branch in Lipjan was sent on 14.02.2019, while the summons by the Basic Court in Ferizaj was received by the [Applicant's] representative on 08.02.2019, namely 6 days prior to receiving the summons from the Court of Lipjan, so this does not justify the absence of the representative [of the Applicant] in the mentioned session in the Basic Court in Ferizaj given [that] he had received the summons from the Basic Court of Ferizaj beforehand and he has had enough time to notify the [Basic] Court in writing about his absence.

The [Basic] Court has also reviewed the certificate issued by the Basic Court in Prishtina- Branch in Lipjan whereby the parties have been notified that

the hearing of date 21.03.2019 is not held, is not an evidence by which the representative of [the Applicant] can justify his absence in the scheduled hearing in Ferizaj.

As for the medical report brought by the representative of [the Applicant] it is not sufficient to justify his absence for not attending the main hearing scheduled by the Basic Court in Ferizaj for 21.03.2019, the representative of [the Applicant] has reported to the Basic Court in Ferizaj on the same day at 13:00h and asked whether the hearing which was scheduled for 9.00h will be held, because he had another engagement in the Court of Lipjan at 9.00h. The [Applicant's] representative did not mention at all that he had been to the doctor for health reasons."

35. Also, the Court of Appeals and the Supreme Court have upheld in its entirety the factual findings and legal position of the Basic Court, assessing that it has determined the factual situation and applied the legal provisions correctly, when rejecting the request for return to the previous situation.
36. The Court notes that the regular courts have assessed the facts and have interpreted and enforced the legal provisions relating to the Applicant's request. Their conclusions were reached following a scrutinized examination of all the arguments presented by the Applicant.
37. The Court further notes that the Applicant reiterates before the Court the same arguments that he had put forward in the proceedings before the regular courts, in particular with regard to the determination of the factual situation and the legality of the decisions of the regular courts.
38. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when establishing facts or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see the case of the Constitutional Court KI129/19, Applicant *Ramadan Koçinaj*, Resolution on Inadmissibility, of 7 November 2019, paragraph 55; see also case KI40/17, Applicant *Muharrem Bytyqi and others*, Resolution on inadmissibility, of 5 July 2017, paragraph 35).
39. The role of the Constitutional Court is only to ensure respect for the rights guaranteed by the Constitution and other legal instruments. For this reason, the Constitutional Court cannot act as a "fourth instance court" (see the case of the Constitutional Court KI129/19, Applicant: *Ramadan Koçinaj* Resolution on Inadmissibility, of 7 November 2019, paragraph 56 and the case of the Court Constitutional KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility, April 5, 2012, paragraph 33).
40. The Court further notes that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot

by itself raise an argumentative allegation for the violation of the right to fair and impartial trial (see the case of the Constitutional Court KI129/19, Applicant *Ramadan Koçinaj*, Resolution on Inadmissibility, of 7 November 2019, paragraph 57 and the case of the Constitutional Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42; see also, *mutatis mutandis*, case of the ECtHR *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

41. The Constitutional Court can only examine whether the proceedings in general, viewed in their entirety, have been held in such a way that the Applicant has had a fair trial pursuant to Article 31 of the Constitution (see the case of the Constitutional Court KI129/19, Applicant *Ramadan Koçinaj*, Resolution on Inadmissibility, 7 November 2019, paragraph 58; see also, *mutatis mutandis*, the case of ECtHR *Edwards v. The United Kingdom*, Judgment of 16 December 1992 and the case of ECtHR, *Shub v. Lithuania*, Judgment of 30 June 2009).
42. In this regard, the Court considers that the reasoning provided by the regular courts, in particular the Basic Court, when referring to the Applicant's allegations for violations of the law, and the assessment of his allegations concerning the grounds of his absence in the hearing of 21 March 2019, is clear and sufficient and the proceedings before the regular courts have not in any way been unfair or arbitrary (see, *mutatis mutandis*, the case of the Constitutional Court KI129/19, Applicant *Ramadan Koçinaj*, Resolution on Inadmissibility, of 7 November 2019, paragraph 59; see also, *mutatis mutandis*, the ECtHR case, *Shub v. Lithuania*, Judgment of 30 June 2009).
43. The Court recalls that the Applicant also alleges that the regular courts violated his right guaranteed by Article 54 of the Constitution.
44. The Court notes that the Applicant did not present any prima facie evidence nor did he substantiate the allegation indicating how and why the right to judicial protection of rights, guaranteed by Article 54 of the Constitution, has been violated.
45. To sum up, the Court considers that the Applicant failed to present any evidence that the proceedings before the regular courts have in any way, violated his constitutional rights.
46. Consequently, the Court concludes that the Referral is manifestly ill founded on constitutional basis and must be declared inadmissible, pursuant to Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 15 April 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

Bekim Sejdiu

Arta Rama-Hajrizi

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