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

Prishtina, on 14 May 2020
Ref. no.:RK1562/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI216/19

Applicant

Selim Sejdiu

Constitutional Review of Decision Rev.no.407/2018 of the Supreme Court of the Republic of Kosovo, of 11 December 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 Referral was submitted by Selim Sejdiu, residing in Runik, Municipality of Skënderaj (hereinafter: the Applicant) represented by Jahir Bejta, Director of the NGO "Ngritja e Zërit".

Challenged Decision

2. The Applicant challenges the Decision no. 407/2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 11 December 2018 which he has received on 1 August 2019.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which as alleged by the Applicant has violated his rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments] , 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR)

Legal Basis

4. The Referral is based on paragraph 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, no.01/2008 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 26 November 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 27 November 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).

7. On 26 December 2019 the Court notified the Applicant about the registration of the Referral. On the same day, the Court sent a copy of the Referral to the Supreme Court of Kosovo, as well as to the Basic Court in Mitrovica- Branch in Skënderaj, and requested information regarding the acknowledgment of receipt, respectively the date when the Applicant has received the Decision Rev.no.407/2018 of the Supreme Court, of 11 December 2018.

8. On 15 January 2020, the Basic Court in Mitrovica- Branch in Skënderaj submitted the acknowledgment of receipt of the challenged decision by the Applicant bearing the date 1 August 2019.

9. On 29 April 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

10. On 22 August 2017, the Applicant filed a claim with the Basic Court in Mitrovica, Branch in Skënderaj (hereinafter: the Basic Court) against the Government of the Republic of Serbia, for compensation of material and non-material damages caused to him during the war between 1998 and 1999.

11. On 28 May 2018, the Basic Court by Judgment C.nr. 253/2017 dismissed the Applicant's claim and declared itself incompetent to decide on this matter.

12. The Applicant filed an appeal with the Court of Appeals against the above-mentioned Judgment of the Basic Court, due to substantial violations of the provisions of the contested procedure. The Applicant requested that the Judgment of the Basic Court be annulled and that his Referral be declared admissible.

13. On 9 October 2018, the Court of Appeals, by Decision Ac.no.3414 / 2018, rejected the Applicant's appeal and confirmed the Decision C. no. 253/2017 of the Basic Court, of 28 May 2017.

14. On 13 November 2018 the Applicant filed a revision with the Supreme Court, alleging the existence of substantial violations of the provisions of the contested procedure. He requested to have his request for revision approved, while the decisions of the Court of Appeals and the Basic Court to be annulled, and his case to be remanded to the Basic Court for reconsideration. The Applicant alleged that there were other provisions of the Law on Contested Procedure which regulate the issue of jurisdiction of the court in his case. Among other things, according to him, in this case the provision of Article 28 of the Law on Contested Procedure, which concerns the competence of the courts in disputes with an international element, should apply.

15. On 11 December 2018, the Supreme Court through Judgment Rev. no. 407/2018 rejected the Applicant's request for revision as unfounded. The Supreme Court reasoned as follows:

> *"Taking into consideration [the provisions of the Law on Contested Procedure] LCP and the fact that it is the Republic of Serbia-Government of R.S. in Belgrade that is being sued by the claim, [...] in the concrete case we are talking about a legal-property dispute in a foreign country, so there apply the norms of international law, for what the domestic court is not competent to decide. The Supreme Court of Kosovo assesses that the Basic Court and the Court of Appeals have correctly applied the provisions of Article 18.3 and Article 39 par. 1 of the LCP, when declaring itself incompetent to adjudicate this legal case and dismissing the claimant's claim, because the court that has the general territorial jurisdiction is the court in the territory of which is located the seat of the Assembly of the*

Republic of Serbia ,so, [...] the seat of the Assembly of the Republic of Serbia as a respondent party is not located in the territory of the Courts of the Republic of Kosovo.
[...]
Thus, the courts of lower instance have found that the matter filed with the claim does not fall within the competence of any domestic court in the country; hence the court of first instance has declared itself incompetent whilst the claimant's claim has been dismissed. This, in the opinion of the Supreme Court of Kosovo, due to the fact that in the concrete case, apply the norms on collision of the laws, according to which the competence of a court of another country is established, and pursuant to the provision of Article 28.2 of the LCP, when it comes to disputes with a foreign element, the domestic court is competent only if such international competence expressly derives from an international agreement or from the Law itself.
[...]
In this concrete case also does not stand the allegation of the Claimant's revision that in this case we are dealing with the territorial jurisdiction chosen under Article 47 and Article 51 of the LCP, as well as the accessory competence under Article 61 of the LCP, because according to the assessment of this court, these provisions are not related to the concrete legal-civil case, and that in this dispute the courts of lower instance have correctly applied the provision of Article 18.3 of the LCP, [...].

Applicant's allegations

16. The Applicant alleges that the Decision of the Supreme Court has violated his rights guaranteed by Articles: 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR and Article 15 of the UDHR.

17. The Applicant has three main categories of allegations: (i) the application of the *"per loci" [ratione loci]* principle, which, according to the Applicant, implies that the regular courts have jurisdiction to review claims on the basis of the country where the damage has been caused; (ii) the obligation of regular courts to apply international human rights standards; and, (iii) his right to judicial protection of rights and the right of access to court.

18. The Applicant initially refers to the issue of territorial jurisdiction (respectively the *"per loci"* principle) and alleges that the regular courts *"have erroneously interpreted the applicable law referred to the territorial jurisdiction of the Basic Court [...], since the court which has the territorial jurisdiction to adjudicate legal matters, is always the court in the territory of which the crime, the moral namely the material damage was committed! This valid definition and legal position also corresponds to the interest of the injured party, the principle of economy in judicial and administrative proceedings, and is also in accordance with the international principle - per loci, administration of claims based on the place where the crime was committed."*

19. The Applicant further refers to some examples of the international case law in which, according to him, the Second World War victims were allowed to *"file individual claims before the national courts for compensation of damage caused by Germany"*. In this regard, they specify that in the cases of Greece and Italy, the individuals were provided the opportunity to seek compensation for the *"damages caused by Germany during World War II in accordance with international "per loci" principle"*.

20. The Applicant, referring to Article 21 paragraph 1 of the Constitution, claims that the regular courts *"did not apply international advanced human rights standards. One of the standards is to allow the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities [...]"*.

21. The Applicant, referring to Article 22 of the Constitution, alleges that while *"human rights as guaranteed by Conventions, international agreements and instruments in case of conflict have precedence over other laws and provisions of public authorities"*, consequently *"filing of claims before the domestic courts is based also on Article 6 of the ECHR and item 15 of the UDHR [...]"*.

22. The Applicant, referring to Article 54 of the Constitution, also states that *"he was denied the right to judicial protection of rights, the right of access to justice at the national level and the institutional guarantees for the protection of human rights"*.

23. Finally, the Applicant requests from the Court to decide on this case in accordance with the law and best judicial practices.

Admissibility of the Referral

24. 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.

25. As an initial note, the Court notes that the subject matter of this case is similar to several other cases, which have already been decided by the Court(see: *mutatis mutandis* cases of the Constitutional Court: KI149/18, KI150/18, KI151 /18, KI152/18, KI153/18 and KI154/18, Applicants *Xhavit Aliu and 5 others*, Resolution on Inadmissibility of 9 August 2019; Cases KI02/19, KI03/19, KI04 /19 and KI05/19, Applicants *Halil Mustafa and 3 others*, Resolution on Inadmissibility of 15 July 2019; Cases KI73/17, KI78/17 and KI85/17, Istref *Rexhepi and 28 others*, Resolution on Inadmissibility, of 23 October 2017; Cases KI97/17, KI99/17, K115/17 and KI121/17 *Mala Mala, Ali Salihu, Nurije Beka and Xhevat Xhinovci*, Resolution on Inadmissibility of 10 January 2018 and cases no. KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102 /18, KI103/18, KI104/18, KI10S/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI128/18 *Fehmi Hoti and 15 others*, Resolution on Inadmissibility of 19 February 2019, all cases of the NGO "Ngritja e Zërit"; see also the relevant legal provisions cited in those cases).

26. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

> *"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. In the following, the Court also examines whether the Applicants have met the admissibility requirements, as defined by law. In this respect, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, 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."*

28. Further, the Court also refers to the Rules of Procedure, specifically paragraph (2) of Rule 39 [Admissibility Criteria], which provides as follows:

> *"(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."*

29. The Court finds that the Applicant is an authorized party who is challenging an act of a public authority after having exhausted all legal remedies. The Applicant has also specified the rights and freedoms which he alleges to have been violated, pursuant to Article 48 of the Law and has also submitted the Referral in accordance with the deadline set out in Article 49 of the Law and Rule 39(1) (c) of the Rules of Procedure.

30. In addition, the Court is to examine whether the admissibility requirement foreseen in Rule 39 (2) of the Rules of Procedure is met. In this regard, the Court recalls that the Applicant alleges that the regular courts have violated several rights protected by the Constitution, the ECHR and the UDHR, with particular emphasis on the right to fair and impartial trial and the right to judicial protection of rights.

31. In this regard, the Court notes that the Applicant alleges that the regular courts have erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court. He further claims that the court in the territory of which the damage has been caused is the competent court to adjudicate his cases. Consequently, according to the Applicant, he was denied the right to judicial protection and access to justice.

32. The Court considers that the Applicant's allegations, in substance, relate to the interpretation by the regular courts of the relevant legal provisions that regulate their territorial jurisdiction, namely the competence to deal with the claims of the Applicant.

33. The Court emphasizes its consolidated position that correct and complete determination of the factual situation, as well as relevant legal interpretations, in principle, fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure that the standards and rights guaranteed by the Constitution are respected, consequently it cannot act as a "fourth instance court"(see, *mutatis mutandis*, in relation to the principle of subsidiarity, the Judgment of the European Court of Human Rights, of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, paragraph 28; see also *mutatis mutandis*, in relation to the "fourth instance", cases of the Constitutional Court KI02/19 , KI03/19, KI04/19 and KI05/19, cited above, paragraph 38; KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility, of 5 April 2012, paragraph 33; as well as the joined cases KI73/17, KI78/17 and KI85/17 cited above, paragraphs 46 and 47).

34. In the present case, the Court notes that the Supreme Court has considered the Applicant's allegations relating to the interpretation by the Court of Appeals and the Basic Court of the relevant legal provisions related to the competence to adjudicate in the case of the Applicant.

35. When reviewing the Applicant's allegations, the Supreme Court reasoned that the Basic Court and the Court of Appeals have correctly applied the provisions of the Law on Contested Procedure when ascertaining that they had no jurisdiction to adjudicate in this court case. Therefore, the Supreme Court rejected the Applicant's allegations, by reasoning that the general territorial

jurisdiction pertains to the court in the territory of which is the seat of the Assembly of the Republic of Serbia, which is not in the territory of the Kosovo courts".

36. On this basis, the Supreme Court in its Judgment Rev. no. 407/2018 , among other things, has was argued that:

> *" [...it is the Republic of Serbia - Government of R.S. in Belgrade that has been sued for compensation of the damage (thus, in the present case we are talking about a legal property dispute in a foreign state),for which the domestic court is not competent to decide, therefore, the Supreme Court of Kosovo assesses that the lower instance courts have correctly applied the provisions of Article 18.3 and Article 39.1 of the LCP, when declaring itself incompetent to adjudicate this legal matter and dismissing the claimant's claim, as the seat of the Assembly of the Republic of Serbia, to decide in this legal matter is not competent the Court of the Republic of Kosovo due to the fact that the seat of the Assembly of the Republic of Serbia as a responding party is not in the territory of the Courts of the Republic of Kosovo]."*

37. The Court considers that the conclusions of the Basic Court, the Court of Appeals and of the Supreme Court were reached following a detailed examination of all the arguments and interpretations submitted by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the procedure the arguments and legal interpretations which he considers to be relevant for his case.

38. Therefore, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair and that the allegation of arbitrary legal interpretation by the regular courts cannot be substantiated.

39. As regards the Applicants' allegations as to *"his right to judicial protection and access to justice"*, the Court emphasizes the case-law of the European Court of Human Rights (ECtHR), which it is obliged to refer to under Article 53 of the Constitution. Based on the latter, the Court also points out its case-law which has been built based on the case-law of the ECtHR wherein it is underlined that there are procedural barriers imposed by the principle of sovereign state immunity-as one of the fundamental principles of public international law - in relation to judicial proceedings that may be conducted against a state in the domestic courts of another state (See the joined cases of the Constitutional Court, KI96/18, KI97/18, KI 98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105,18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, Applicant *Fehmi Hoti and 15 others,* Resolution on Inadmissibility, of 30 January 2019, paragraphs 58 and 59, see, *mutatis mutandis,* also the ECtHR cases quoted in the abovementioned case of the Constitutional Court, *Jones and Others v. United Kingdom,* Applications 34356/06 and 40528/06, Judgment of 14 January 2014, *AI-Adsani v. United Kingdom,* Applications no. 34356/06 and 40528/06, Judgment of 21 November 2001).

40. Moreover, in the case *Al-Adsani v. The United Kingdom,* the ECtHR has argued as follows: *"The right of access to court may be subject to limitations, provided they do not impair the very essence of the right. Such limitations must pursue a legitimate aim and be proportionate. The grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law {...]. As to proportionality, the Convention should as far as possible be interpreted in harmony with other rules of international law, including those relating to State immunity. Thus, measures taken by a State which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court".* Such a stance, as far as it concerns the tension between the principle of sovereign immunity of states and the right of access to justice (court), was emphasized by the International Court of Justice (see, for example, the case *Germany v Italy; Greece as an intervening party,* Judgment of 3 February 2012).

41. In the light of the foregoing arguments, the Court considers it important to emphasize the fact that the regular courts of Kosovo, in the Applicant's case did not deal with his right to seek compensation of damage, but only with the territorial jurisdiction of the courts of Kosovo to conduct proceedings against another state.

42. The Court also notes that the facts presented and the Applicant's claims are almost identical to some earlier referrals, which the Court has found to be inadmissible, as manifestly ill founded on constitutional basis (see, the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, cited above, KI73/17, KI78/17 and KI85/17, cited above, KI97/17, KI99/17, K115/17 and KI121/17, cited above). All these referrals have raised almost identical allegations with the requests addressed in this decision, and just like in those cases, in this case too, the Court considers that they must be declared ill-founded on constitutional basis.

43. In sum, the Court considers that the Applicant's request does not prove that the proceedings in the regular courts have violated the rights guaranteed by the Constitution, namely Articles 21[General Principles], 22[Direct Applicability of International Agreements and Instruments], 53[Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 of the ECHR, as well as Article 15 of the UDHR.

44. Consequently, the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible as provided for by Article 113.7 of the Constitution and further specified by Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 29 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**

Nexhmi Rexhepi

Arta Rama-Hajrizi

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