



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

Prishtina, on 10 August 2020
Ref.No.:RK 1599/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI215/19

Applicant

Fekë Kuçi

Constitutional review of Judgment AA. No. 524/2018 of the Court of Appeals of 10 April 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 Fekë Kuçi (hereinafter: the Applicant), from the village of Studenica municipality of Istog.

Challenged decision

2. The Applicant challenges Judgment [AA. No. 524/2018] of the Court of Appeals of 10 April 2019, and Notification KMLA. No. 09/2019 of the State Prosecutor of 21 May 2019.
3. Judgment [AA. No. 524/2018] of the Court of Appeals of 10 April 2019 was served on the Applicant on 3 May 2019.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] 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 for the Protection of Fundamental Rights and Freedoms (hereinafter: the ECHR) and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).
5. The Applicant also requests the Court to be present during the session of the Court when deciding on his referral.

Legal basis

6. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 20 [Decisions] and 22 [Processing Referrals] 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

7. On 26 November 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 27 November 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
9. On 9 January 2020, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
10. On 9 January 2020, the Court requested the Basic Court in Prishtina to attach a copy of the acknowledgment of receipt when the Applicant was served with the Judgment [AA. No. 524/2018] of the Court of Appeals of 10 April 2019.
11. On 14 January 2020, the Basic Court in Prishtina submitted to the Court the acknowledgment of receipt of the Judgment [AA. No. 524/2018] of the Court of Appeals, by the Applicant, with the date of service of 3 May 2019.

12. On 23 January 2020, the Applicant submitted additional documents to the Court.
13. On 15 July 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

From the case file, the Court takes into account that two proceedings were conducted on the Applicant's case as follows:

Proceedings regarding the division of property after the death of the testator

14. The Applicant and his brothers conducted proceedings before the regular courts regarding the division of property after the death of their father. On the basis of the proposal for consideration of the inheritance, the Municipal Court in Istog, by Decision [T. No. 21/2001] of 22 May 2001, divided the hereditary property of the testator, namely the Applicant's father. However, due to disagreements over the manner of division of property between the legal heirs, several different appellate proceedings were initiated before the regular courts. According to the Applicant, this proceeding was remanded to the Basic Court in Peja branch in Istog for retrial.

(i) Disciplinary proceedings before the Kosovo Police and Administrative dispute regarding the latter

15. Due to the suspicion that they behaved unprofessionally and thus abused their official position in the case related to the dispute over the division of property of the Applicant and his brothers, the Applicant initiated disciplinary proceedings against the three police officers before the Kosovo Inspectorate.
16. On 13 July 2016, the Kosovo Police Disciplinary Commission rendered Decision 495/KBD/2016, Decision 496/KBD/2016 and Decision 497/KBD/2016 finding that the Applicant's allegations were ungrounded and that the accused police officers did not commit any disciplinary offense.
17. On an unspecified date against the above-mentioned decisions of the Kosovo Police Disciplinary Commission, the Applicant filed a complaint with the Kosovo Police Complaints Commission.
18. On 8 September 2016, the Appeals Commission of the Kosovo Police, by decision 166-KA-D/2016, rejected the Applicant's appeal as ungrounded and upheld in entirety the decisions (495/KBD/2016, 496/KBD/2016 and 497/KBD/2016) of the Kosovo Police Disciplinary Commission of 13 July 2016.

19. On an unspecified date the Applicant filed a complaint with the Basic Court in Prishtina, Department of Administrative Matters against the above-mentioned decision of the Appeals Commission of the Kosovo Police.
20. On 9 August 2018, the Basic Court in Prishtina, the Department for Administrative Matters, by Judgment [A. No. 1555/2016] as ungrounded the Applicant's statement of claim.
21. On an unspecified date, the Applicant against the Judgment of the Basic Court in Prishtina, filed appeal with the Court of Appeals on the grounds of "*erroneous application of substantive law and violation of the law*".
22. On 10 April 2019, the Court of Appeals by Judgment AA. No. 524/2019 rejected as ungrounded the Applicant's appeal and upheld the judgment of the Basic Court.
23. On 17 May 2019, the Applicant submitted to the Office of the Chief State Prosecutor a proposal to initiate a request for protection of legality against the Judgment [A. No. 1555/2016] of the Basic Court in Prishtina and the Judgment [AA. No. 524/2019] of the Court of Appeals.
24. On 21 May 2019, the Office of the Chief State Prosecutor notified (notification KMLP. No. 09/19) the Applicant that he did not find any of the legal grounds for initiating the request for protection of legality.

Applicant's allegations

25. The Applicant alleges that the challenged decisions violated his rights guaranteed by Articles 24 and 31 of the Constitution in conjunction with Article 6 of the ECHR as well as Article 10 of the UDHR.
26. The Applicant also alleges a violation of the Criminal Code and the Criminal Procedure Code because *„the criminal reports have been dismissed without consideration, the reports based on which prosecution is being conducted ex officio “*. The Applicant alleges violations of the Law on Out-of-Contentious Procedure (Articles 159, 159 (2) and Article 159 (3), violations of the Law on Contested Procedure as well as the Law on Inheritance of Kosovo (Articles 36, 132, 139) (1), and Article 140).
27. In his Referral, the Applicant considers that, *“Regarding the case T. no. 21/2001 of 08.05.2001, the regular courts, prosecutor's offices and police investigative bodies, as public institutions within the justice system, we allege that they have committed serious violations of applicable laws in Kosovo, which violations of these laws are incorporated by violation of Articles 24 and 31 of the Constitution of the Republic of Kosovo, and I think that from the beginning until now, there have been persistent serious violations of the law and rules concerning this case and violations of the legal provisions of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the right to a fair trial”*.

28. The Applicant states in his Referral that, *“the right to fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR has been violated due to the failure of the courts to summon the parties to the proceedings, failure to discuss criminal reports, failure to allow request for protection of legality, and refusal of expertise in an unfair manner, all this jeopardized the right of defense and the fairness of the proceedings as a whole, and deprived the Applicant of the opportunity to present arguments in his defense under the same conditions as at the beginning of the proceedings when the Applicant was present at one of the court sessions”*.
29. Finally, the Applicant requests the Court to,
- I. To hold a public hearing;*
 - II. TO DECLARE unanimously the Referral as admissible;*
 - III. TO HOLD by a majority that there has been a violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution and Article 6 (Right to a fair trial) of the European Convention on Human Rights.*
 - IV. TO DECLARE by a majority of votes the notification KMLA No. 09/2019 of 21.05.2019, of the Office of the Chief State Prosecutor.*
 - V. TO REMAND by a majority of votes Notification KMLA No. 09/2019 of the Office of the Chief State Prosecutor of 21.05.2019 for retrial in accordance with the judgment of the Constitutional Court.*
 - TO ORDER that the judgment be notified to the parties in accordance with Article 20.4 of the Law and published in the Official Gazette.*
 - TO DECLARE that this judgment is effective immediately”.*

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
31. 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.”*
32. The Court also examines whether the Applicant has fulfilled the admissibility requirements, which are further prescribed in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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]

“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.”

33. In addition, the Court also refers to Article 49 of the Law, which stipulates:

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...”

34. In addition, the Court refers to Rule 39 (1) (b) and (c) of the Rules of Procedure, which specifies:

“(1) The Court may consider a referral as admissible if:

[...]

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,

(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant, [...].”

35. Having regard to the chronology of the Applicant’s legal actions taken, as well as the timeframes within which the regular courts decided on the merits of their claims, the Court finds that the Applicant in fact conducted two separate court proceedings, in which, and although essentially concerned to the same procedure (inheritance division proceedings and disciplinary and administrative proceedings against police officers on suspicion of unprofessional conduct), the conducted proceedings differ in procedural terms, both in terms of exhaustion of legal remedies and in terms of time limits.
36. It is precisely this diversity of proceedings that has influenced the Court to consider and analyze these proceedings separately when assessing the admissibility of the Referral.

Assessment of the admissibility of the Referral in connection with the first court proceeding on the division of property after the death of the testator

37. As to the first court proceedings regarding the division of property after the death of the Applicant's father, the Court, after considering the attached documents and on the basis of the Applicant's allegations, finds that these proceedings are still pending, based on complaints of the Applicant and other heirs of the disputed property. According to the Applicant, this procedure was remanded to the Basic Court in Peja-Branch in Istog for retrial.
38. The Court recalls that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the alleged violation of the Constitution, to remedy such a violation of a fundamental human right.
39. The rationale for the exhaustion rule is to afford the public authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order provides an effective remedy for the violation of constitutional rights (see case of the Constitutional Court, KI23/10, Applicant *Jovica Gadjić*, Resolution on Inadmissibility of 19 September 2013, and see ECtHR cases: *Gäfgen v. Germany*, Judgment of 1 June 2010, paragraph 142; *Kunert v. Poland*, Judgment of 4 July 2019, paragraph 42; and *Gadd v. the United Kingdom*, decision of 28 September 2017, paragraph 54). Based on all the above, the Court concludes that the Applicant has not exhausted all legal remedies prescribed by law in the present proceedings (see, *inter alia*, the cases of the Constitutional Court, KI32/11, Applicant *Lulzim Ramaj*, Resolution on Inadmissibility of 20 April 2012; KI113/12, Applicant *Haki Gjocaj*, Resolution on Inadmissibility of 25 January 2013, paragraph 34; KI114/12, Applicant *Kastriot Hasi*, Resolution on Inadmissibility of 3 April 2013, paragraph 33; KI07/13, Applicant *Ibish Kastrati*, Resolution on Inadmissibility of 5 July 2013, paragraphs 28-29; KI58/13, Applicant *Sadik Bislimi*, Resolution on Inadmissibility of 25 November 2013, paragraph 31, and KI102/16, Resolution on Inadmissibility of 2 March 2017, paragraph 39).
40. Therefore, in connection with the first proceedings regarding the division of inheritance, the Court finds that the Applicant has not exhausted all legal remedies prescribed by law, and that the Referral is accordingly inadmissible in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 39 (1) (b) the Rules of Procedure.

Assessment of the admissibility of the referral related to the disciplinary proceedings in the Kosovo Police and the administrative dispute related to it

41. With regard to the second court proceeding, in order to be able to verify whether the referral was filed within the legal time-limit, the Court takes into account the "*last decision*" which decided regarding the Applicant's Referral, the date on which the Applicant received the decision and the date of submission of the Referral to the Constitutional Court. This finding is also

confirmed in the case law of the Court in cases: KI154/14, Applicant: *Bujar Nrecaj and Haxhi Nrecaj* Resolution on Inadmissibility of 30 June 2016, paragraph 35, and KI201/13, Applicant: *Sofa Gjonbalaj* Resolution on Inadmissibility of 2 April 2014, paragraph 32.

42. As to the “*last decision*”, the Court considers that Judgment AA. No. 524/18 of the Court of Appeals of 10 April 2019, is the last decision regarding the Applicant’s Referral.
43. Accordingly, the Court notes that the abovementioned judgment was rendered on 10 April 2019, while the Applicant was served with this Judgment on 3 May 2019. In this regard, as a *dies a quo* of the legal deadline of 4 (four) months, the date of receipt of the judgment by the Applicant is taken, namely 3 May 2019. The deadline starts to run from the final decision, resulting from the exhaustion of legal remedies, which are adequate and effective in providing redress in respect of the matter which is a subject of complaint (see, *mutatis mutandis*, *Norkin v. Russia*, application 21056/11, ECtHR, Decision of 5 February 2013, and see also *Maya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
44. As to the Applicant’s allegation that the Notification of the State Prosecutor’s Office of 21 May 2019 applied on 25 May 2019 was the last decision as to the effective legal remedy, the Court notes that the fact that the Applicant received a notification from the Office of the Chief Prosecutor on the stated date, but according to this notification, the Chief State Prosecutor did not initiate a request for protection of legality regarding the Applicant’s case, with a reasoning: “*that he did not find any of the legal grounds for initiating the request for protection of legality*”.
45. Accordingly, the request for protection of legality submitted to the public prosecutor is a legal remedy which is not directly available to the Applicant, but depends on the “*mediator*”, and in the present case the “*mediator*” is the state prosecutor, and as such is not considered by the Court (see *Tanase v. Moldova*, [VV], paragraph 122).
46. As such, the notification of the Chief State Prosecutor is not considered a “*final decision*” regarding the Applicant’s issue, as the “*last decision*”, according to Article 49 of the Law, would otherwise be the last decision rejecting the Applicant’s appeal, which in this case is the judgment of the Court of Appeals (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, application no. 46477/99, ECtHR, decision of 14 March 2002).
47. For the aforementioned reasons, the Court considers that the “*final decision*” regarding the Applicant’s case is the judgment of the Court of Appeals and the time limit starts to run from the date of receipt of that judgment (see, *mutatis mutandis*, *Bayram and Yildirim v. Turkey*, application no. 38587/97, ECtHR, decision of 29 January 2002). Accordingly, it is noted that the Applicant received this Judgment on 3 May 2019, while he submitted the Referral to the Constitutional Court on 26 November 2019.

48. On the basis of the above, it follows that the Referral was not filed within the legal time limit set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.
49. For the abovementioned reasons, the Court concludes that the Applicant's referral does not meet the procedural admissibility requirements, as it is out of time.

Request for hearing

50. The Court recalls that the Applicant requested the Court to hold a public hearing in his case.
51. In this regard, the Court refers to Article 20 of the Law:

“1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.

2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files.”
52. The Court notes that there is no reason invoked by the Applicant in support of this request.
53. The Court considers that the documents in the Referral are sufficient to decide this case in accordance with the text of Article 20, paragraph 2 of the Law (see, *mutatis mutandis*, case of the Constitutional Court No. KI34/17, Applicant *Valdete Daka*, Judgment of 12 June 2017, paragraphs 108-110).
54. Therefore, the Applicant's request to hold an oral hearing was rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Articles 20, 47 and 49 of the Law and Rule 39 (1) (b) and (c) of the Rules of Procedure, on 15 July 2020, unanimously

DECIDES

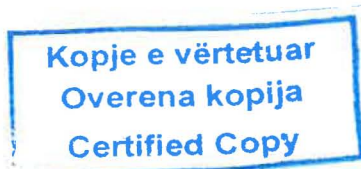
- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for public hearing;
- III. TO NOTIFY this decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law, and
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Remzije Istrefi-Peci

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.