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

Prishtina, on 3 August 2020
Ref.No.:RK 1593/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI64/20

Applicant

Asllan Meka

Constitutional review of Judgment Rev. no. 2/2020, of the Supreme Court, of 19 February 2020

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 Asllan Meka from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 2/2020] of the Supreme Court, of 19 February 2020.

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged Judgment, which as alleged by the Applicant violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102[General Principles of the Judicial System]of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 1 [Protection of property] of Protocol I, and Articles 6[Right to a fair trial] and 13[Right to an effective remedy] of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, and Article 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo No. 03 / L-121 (hereinafter: the Law), as well as 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 21 April 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 May 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges Bekim Sejdiu (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi, members.

7. On 28 May 2020, the Court notified the Applicant about the registration of the Referral and requested from him to complete the Referral Form, and sent a copy of the Referral to the Supreme Court.

8. On 17 June 2020, the Applicant submitted to the Court the completed Referral Form along with several other documents.

9. On 22 July 2020, the Review Panel after having considered the report of the Judge Rapporteur unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. According to the case file, on 26 February 2008, the Applicant, together with three other persons, E.M., S.M. and SH.K.M, as a borrower, entered into a loan contract with the claimant A.K., as a lender, according to which they received a

loan in the amount of 35,000 (thirty five thousand) Euros, with a repayment period of 1 (one) year.

11. On an unspecified date, after the borrowers had not repaid the debt, the lender A.K. filed a claim with the Basic Court in Gjakova (hereinafter: the Basic Court) against the Applicant and the other borrowers, E.M., S.M. and SH. K.M, for the repayment of the debt of 35,000 (thirty five thousand) euros.

12. On 2 March 2015, the Basic Court by Judgment [C. no. 301/14] approved the claim of the claimant A.K. in its entirety, and jointly obliged the Applicant and the other respondents E.M., S.M. and Sh.K.M, to pay to the claimant the amount of 35,000 (thirty five thousand) euros in the of repayment of debt under the loan contract, with relevant legal interest, which begins to run from 24.03.2010 onwards, until the definitive payment, in the amount paid by commercial banks in Kosovo for funds deposited in the bank.

13. On 8 April 2015, the Applicant filed an appeal with the Court of Appeals against the Judgment [C. no. 301/14] of the Basic Court, of 2 March 2015 requesting that the appealed judgment be quashed and the case be returned to the court of first instance for retrial due to essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation as well as erroneous application of the substantive law.

14. On 8 November 2019, the Court of Appeals through Judgment [CA. no. 1774/2015] rejected the appeal of the Applicant and the other respondents as unfounded, and confirmed the Judgment of the Basic Court.

15. On 27 November 2019, the Applicant filed a revision with the Supreme Court against the Judgment of the Court of Appeals and the Basic Court, alleging essential violations of the contested provisions and erroneous application of the substantive law.

16. On 19 February 2020, the Supreme Court by Judgment [Rev. no. no. 2/2020] rejected the Applicant's revision as unfounded.

Applicant's allegations

17. The Applicant challenges the Judgment [Rev. no. 2/2020] of the Supreme Court, of 19 February 2020, alleging that it was issued in violation of his fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], and 102 [General Principles of the Judicial System] of the Constitution as well as Article 1 of Protocol I, and Articles 6 and 13 of the ECHR.

18. The Applicant refers to the aforementioned Articles of the Constitution and the ECHR alleging violations of the fundamental rights guaranteed by these Articles, but without elaborating and justifying at all how and why have these rights guaranteed by these Articles of the Constitution and the ECHR been violated.

19. The Applicant alleges that the regular courts, through their judgments, have *"protected usury"*. He states that the money was given to him with usury, and that the reasoning given in the judgments of regular courts are unclear and contradictory.

20. The Applicant further alleges that (i) the regular courts have not fully assessed his appeals, as required by Article 204 of the Law on Contested Procedure (LCP); (ii) there were four of us respondents and respondents 2, 3 and 4 were never summoned to court but only the first respondent; (iii) the court of first instance has not established where was the money received and given; and that (iv) the contracts are fictitious and imposed. According to the Applicant, the courts did not establish anything therefore the claim should have been dismissed.

21. Another allegation of the Applicant is that according to him the claimant filed the claim in 2014 while he is obliged to pay the interest from 2003. He states that this debt has prescribed but the objection of prescription has not been addressed. According to the Applicant *"The issue of prescription until 22 March 1999 was regulated by the LOR, Article 371, and the prescription period was 5 (five) years. Therefore, the provision of Article 34 of the Law on Amendments and Supplements to the Law on Obligations "Official Gazette of the FRY" 31/93 of 18.06.1993 which entered into force on 25.06.1993 and which provision regulates differently that field from the way regulated by legal provisions in force until 22 March 1999 is a non-applicable provision, which cannot be applied even exceptionally, despite being non-discriminatory, wherefrom it results that the Article 34 of the Law on Amendments and Supplements to the Law on Obligations "Official Gazette of the FRY" 31/93 of 18 June 1993 is an inapplicable law for Kosovo"*.

22. Finally, the Applicant requests from the Court to annul and declare "unconstitutional" the judgments of the regular courts.

Assessment of the admissibility of the Referral

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

24. 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."*

25. The Court also 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. […]"

26. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; who is challenging an act of a public authority, namely the Judgment [Rev. no.2/2020] of the Supreme Court, of 19 February 2020; he has specified the rights and freedoms for which he alleges to have been violated; as well as he has submitted the Referral within the stipulated legal deadline.

27. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, rule 39 (2) which provides:

"(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."

28. In this regard, the Court first recalls that the Applicant alleges that the Supreme Court, by Judgment [Rev.no. 2/2020] of 19 February 2020 has violated his rights guaranteed by Articles 31, 32 and 102 of the Constitution as well as Article 1 of Protocol I and Articles 6 and 13 of the ECHR.

29. The Court recalls that the Applicant, in essence, complains that in his case there was no fair and impartial trial on the grounds that the regular courts did not take into account the facts presented and did not fully review his appeals. The Applicant also alleges that the contracts were fictitious and imposed, and that here we are dealing with usury and not money lending. According to the Applicant, the Supreme Court erroneously interpreted the law when deciding

to have the interest paid from 2003, because according to him the claim was filed in 2014 and the interest is always applied from the day when the claim is submitted.

30. With respect to the above allegations, the Court considers that the Applicant in essence alleges the erroneous determination of the factual situation and the erroneous application of the substantive and procedural law by the regular courts. The Court notes that the Applicant's allegations are in contradiction with the documentation submitted to the Court by the Applicant himself.

31. As regards the Applicant's allegations that the interest from the loan contract is *"usurious"* and that consequently *"the entire contract is usurious"*, the Court notes that these allegations of the Applicant are incorrect because the judgment of the first instance has determined that the Applicant is obliged to pay *"... the respective legal interest which is paid by Commercial Banks in Kosovo for the funds deposited in the bank, for a period of over one year..."*.

32. The Applicant also alleges that the court forced him to pay the debt and interest from 2003, and that the court did not take into consideration the prescription of the request, but the Court notes that these allegations of the Applicant are incorrect because with the Judgment of the first instance it has been determined that the obligation to pay interest *"... begins to run from 24.03.2010 onwards, until the definitive payment..."*.

33. In this respect, the Court notes that it is not its duty to deal with errors of law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a court of "fourth instance", which would result in exceeding the limits imposed on its jurisdiction. In line with the case law of the ECtHR as well as its already consolidated case-law, the Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in a certain way rather than in another (See, the Case *García Ruiz v. Spain*, ECtHR No. 30544/96, of 21 January 1999, paragraphs 28-30 and see also the Case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraphs 29-30).

34. The Constitutional Court can only examine whether the evidence have been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a manner that the Applicant has had a fair trial (See, inter alia, the Case *Edwards v. United Kingdom,* No. 13071/87, Judgment of 16 December 1992, paragraph 34).

35. On the basis of the case file, the Court notes that the reasoning provided in the Decision of the Supreme Court is clear and having reviewed all the proceedings, the Court also found that the proceedings before the Court of Appeals and the Basic Court were not unfair or arbitrary (See, the Case *Shub v. Lithuania*, No. 17064/06, ECtHR Decision, of 30 June 2009).

36. In the circumstances of the present case, in order to elaborate even more concretely the general principles of the constitutional trial, the Court notes that all the regular courts had addressed all the allegations of the Applicant filed by the response to the claim, appeal and revision.

37. As to the Applicant's allegations, the Basic Court, by its Judgment [C. no. 301/14] of 2 March 2015, inter alia, had pointed out:

> *"On the basis of the Contract on monetary funds concluded on 26.02.2008, between the contractors Afrim Kumnova, in the capacity of the lender (the claimant in this case) and Asllan Meka, Enver Meka, Saranda Meka, Shahindere Koshi (maiden name Meka), by Gjakova and Zyrafa Meka - formerly from Gjakova as borrowers (the respondents in this case) - with the exception of the now deceased Zyrafa Meka, who died in the meantime and who is survived by respondents 1-4, it is confirmed that the lender Afrim has lent to the aforementioned borrowers the amount of 35,000.00 euro, for a repayment period of one year, counting from the day of signing the abovementioned contract. The contract in question was signed by all contractors, and the issue of their signing was not disputed at all by the parties in the proceedings during the review of this matter.*
>
> *This Court in the present case considers that the defendants until the moment of the main trial with no material evidence have managed to argue the fact that they have the amount of monetary sum to the claimant. Hence, starting from the legal principle that: The contract is a law for the parties ("pacta sund servanda") it results that they have a legal obligation towards the claimant, to pay back the borrowed amount, consisting of 35,000.00 euros, along with the respective legal interest and accessory costs as determined in the enacting clause of this judgment. In favour of this finding of the Court goes also the fact that the respondents in this case have in no way and under no circumstances disputed the fact of having signed the contract in question and having received the monetary sum borrowed from the claimant as indicated in the receipt no. 01/2008 dated 26.02.2008 ".*

38. Having addressed the allegations raised in the appeal, the Court of Appeals, through its Judgment [CA. no. 1774/2015] of 8 November 2019, inter alia, had pointed out:

> "*The Panel finds that the court of first instance during the conduction of the contested procedure, has not committed essential violations of the provisions of the contested procedure from article 182.2 b), g), j), k) and m) of the LCP, for which the court of second instance takes care ex officio, nor other procedural violations that would affect the fair decision-making in this legal matter.*
>
> *The Panel considers that the respondents failed to prove their appeal claims with relevant, credible and sufficient facts, despite the fact that they had the burden of proof, therefore their complaint is unfounded and as such it was rejected."*

39. More specifically, the Supreme Court in its Judgment stated the following:

> *"The Supreme Court of Kosovo has assessed as unfounded the statements of the respondent in the revision, stating that the challenged judgment was rendered by essential violation of the provisions of the contested procedure from Article 182.2 (n), because as stated the enacting clause of the judgment is not understandable and has deficiencies due to which it cannot be examined and that the enacting clause is contrary to the reasons, respectively the challenged judgment has no reasons on the decisive facts. According to the assessment of the revision court, the challenged judgment did not contain such violations of the procedure, because the enacting clause of the judgment is in accordance with the evidence administered, when the court of appeals found that the respondents did not fulfil their obligation under the loan contract, because they did not pay back to the clamant the amount of 35,000 euros, within the deadline set in the contract. The respondents with no evidence have argued the fact that the respondents have repaid the amount owed. Article 557 defines the essential conditions for concluding a loan contract, as follows: "With the loan contract, the lender is obliged to hand over in the ownership, respectively to deposit for the borrower, a certain amount of money or a certain amount of other replaceable items, while the borrower is obliged to return after a certain time the same amount of money, respectively the same amount of items of the same type and quality, the borrower acquires the right of disposal over the items received, respectively the right of ownership". On the basis of the contract entered between the litigants it results that that the claimant as a lender has given to the respondents the amount of money, with the obligation to return it within the set deadline and thereby the claimant has fulfilled the obligation to the respondents, while the respondents by not paying back the amount of the loan amount, have failed to fulfil the obligation to the claimant and are obliged to repay the loan in the amount of 35,000 euros".*

40. Consequently and as elaborated above, the Court notes that all the regular courts had addressed the Applicant's allegations and found that the amount of 35,000 (thirty five thousand) euros had been borrowed by the Applicant and the persons E.M., S.M. and SH.K.M from the claimant A.K., which is confirmed through the contract concluded between them and the receipt on the delivery of money, and that this amount must be repaid to the lender.

41. In this respect, the Court further considers that the Applicant has not succeeded to prove that the proceedings before the Supreme Court or other regular courts were unfair or tainted by arbitrariness, or that his fundamental rights and freedoms protected by the Constitution have been violated as a result of erroneous interpretation of the procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality. (See, the Case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, paragraph 44 and see also the Case KI150/15; KI161/15; KI162/15; KI14/16; KI19 /16; KI60/16 and KI64/16, *Applicants Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku,*

Esat Tahiri, Azem Duraku and Sami Lushtaku, Resolution on Inadmissibility, of 15 November 2016, paragraph 62).

42. The Court also reiterates that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, does not guarantee anyone a favourable outcome in a judicial proceeding, nor does it provide for the Court to question the application of substantive law by the regular courts of a civil dispute, where mainly one of the parties wins and the other loses. (See, the Cases of the Court KI118/17 Applicant Şani Kervan and others, Resolution on Inadmissibility, of 17 January 2018, paragraph 36; and KI99/19, Applicant Persa Raičević, Resolution on Inadmissibility. of 19 December 2019, paragraph 48).

43. In line with its consolidated case law, the Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts, namely the decisions of the Supreme Court, the Court of Appeals and the Basic Court, cannot by itself raise an arguable allegation for a violation of the right to fair and impartial trial. (See, *mutatis mutandis*, the ECtHR Case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also the Case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

44. With respect to the allegations for violation of Articles 32 and 102 of the Constitution, as well as Article 1 of Protocol I and Article 13 of the ECHR, the Court notes that mere mention of Articles of the Constitution and the ECHR is not sufficient to build an allegation for constitutional violations. When alleging such violations of the Constitution and the ECHR, the Applicants must provide reasoned and compelling arguments. (See, in this context, the case of Court KI136 / 14, Abdullah Bajqinca, Decision on Inadmissibility of 10 February 2015, paragraph 33).

45. As a result, the Court considers that the Applicant has failed to substantiate the allegations that the relevant proceedings were in any way unfair or arbitrary and that the challenged decision violated his rights and freedoms guaranteed by the Constitution and the ECHR.

46. In conclusion, pursuant to Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis, and is consequently inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 22 July 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

Radomir Laban

President of the Constitutional Court

Arta Rama-Hajrizi

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