



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

Prishtina, on 23 October 2020
Ref.No.:RK 1631/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI106/19

Applicant

Mark Nikolla

**Constitutional review
of Decision Ac. No. 496/18 of the Court of Appeals of 20 March 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 Mark Nikolla, residing in Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [Ac. No. 496/18] of 20 March 2019 of the Court of Appeals in conjunction with the Order [P. No. 364/14] of 12 January 2018 of the Private Enforcement Agent.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violates the Applicant's rights guaranteed by Article 3 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] and 59 [Types of decisions] 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 24 June 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 June 2019, the President of the Court appointed Judge Selvete Gërxhaliu Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding) Remzije Istrefi-Peci and Nexhmi Rexhepi, members.
7. On 11 July 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
8. On 18 July 2019, the Court sent a letter to the Applicant and asked him to complete the Referral.
9. On 24 and 26 July and 8 August 2019, the Applicant submitted additional documents to the Court.
10. On 16 August 2019, Court notified Private bailiff Gjokë Radi
11. On 7 October 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 27 April 2011, the Applicant together with Z.N as a debtor and ProcreditBank (hereinafter: PCB) as a creditor entered into a loan agreement no. 4038649.
13. On 15 October 2012, the Applicant together with Z.N as debtor and PCB as creditor enter into the business loan contract with no. 40043736.
14. The creditor PCB, after some remarks sent to the debtors for non-payment of the loan, submitted a proposal for enforcement to the Basic Court in Gjakova (hereinafter: the Basic Court), namely for the sale of mortgaged immovable property due to non-payment of obligations to it.
15. On 28 April 2014, the Basic Court by the Decision [E. No. 454/2014], allowed the enforcement according to the creditor's proposal for sequestration of the collateral and execution in the immovable - mortgage.
16. On 18 September 2014, the Basic Court, through its conclusion [E. No. 454/14], transferred the case completely to Private Enforcement Agent Gj. R. in Gjakova [hereinafter: Private Enforcement Agent], for the extension of the enforcement procedure.
17. On 22 September 2014, the Private Enforcement Agent notified the parties in the procedure for the extension of the enforcement procedure at his enforcement office.
18. The second debtor Z.N, filed an objection against the Decision [E. No. 454/2014], of the Basic Court.
19. On 23 April 2015, the Basic Court by Decision [PPP. No. 19/14], rejected the objection as ungrounded and stated that the appeal against this decision does not stop the enforcement procedure.
20. Against the Decision [PPP. No. 19/14] of the Basic Court, the second debtor Z.N filed an appeal with the Court of Appeals.
21. On 9 March 2017, the Court of Appeals by Decision [Ac. No. 2530/15], rejected as ungrounded the appeal of the second debtor Z.N, and upheld the Decision of the Basic Court [PPP. No. 19/14].

Summary of facts in the enforcement procedure before the Private Enforcement Agent

22. After remanding the case from the Court of Appeals to the Private Enforcement Agent, the latter issued a conclusion for the sale of the immovable property, through a public auction on 26 April 2017, and set the date of the public sale on 26 May 2017.
23. The Applicant through the submission of 3 May 2017 by the private enforcement agent, requested the postponement of the enforcement until

September, because he had a sick sister and would not be able to attend the hearing.

24. At the hearing held on 26 May 2017, the creditor's representative agreed to postpone the hearing within a reasonable time but not until September. Therefore, the Applicant's request for postponement of the hearing was approved and the public auction for the sale of immovable property was scheduled for 23 June 2017. This auction also failed due to lack of interested parties for the purchase.
25. On 24 July 2017, the second auction was scheduled. During this session, with the consent of the creditor and the debtor, the enforcement related to this case was postponed until 10 November 2017, pending that the parties reach an agreement on the return of the remaining loan.
26. As no agreement was reached on the payment of the loan, the creditor's representative requested the continuation of the enforcement. At the request of the creditor on 14 November 2017, the private enforcement agent issued a conclusion and scheduled the second public auction for 15 December 2017.
27. On 15 December 2017, the second public auction was held where the only bidder for the purchase of the immovable property was the creditor's authorized. The amount offered for the purchase of the immovable property was found to be 1/3 of the determined value. The private enforcement agent, through the conclusion issued on the same date, agreed that the immovable property be sold to the bidder in this case to the creditor.
28. On 12 January 2018, the private enforcement agent issued the order [P. No. 367/14] stating that (i) the immovable property of the debtor Z.N from Gjakova is sold; (ii) The immovable property is sold to the creditor ProcreditBank - Branch in Gjakova under the terms on the basis of the conclusion for the public sale of 15 December 2017; (iii) the debtors and all other holders are obliged to vacate the immovable property in question from the people and their belongings to the creditor and to hand over the immovable property in the possession of the creditor, (iv) the legal property service at the Municipal Directorate of Geodesy Cadastre and Property in the Municipality of Gjakova will delete the property rights from the debtor Z.N from Gjakova and the immovable property from point I of this Order to register as property in the name of the creditor - buyer ProcreditBank - branch in Gjakova.
29. On 18 January 2018, the Applicant filed an appeal with the Court of Appeals against the order [P. No. 367/14] of 12 January 2018 of the Private Enforcement Agent, due to irregularities of the enforcement.
30. On 20 March 2019, the Court of Appeals, by Decision [Ac. No. 496/18], rejected as ungrounded the Applicant's appeal, regarding the enforcement order of 12 January 2018, with the reasoning: *"The Court of Appeals considers that the enforcement body, based on the evidence found in the case file, has received a fair order and based on concrete legal provisions, the latter is understandable and clear, therefore the decision of the enforcement body in this regard is also accepted by the Court of Appeals, considering that the*

challenged order is regular and lawful, because it does not contain essential violation of the provisions of the contested procedure under Article 182, paragraph 1 and 2 of the LCP, the factual situation was correctly determined and the substantive law has been correctly applied, so that the legality of this order can be investigated and assessed, violations which the court of second instance investigates ex officio pursuant to Article 194 of the LCP”.

31. On 15 May 2019, the Applicant filed a proposal to initiate a request for protection of legality with the Office of the Chief State Prosecutor, against the Decision of the Court of Appeals [Ac. No. 496/18] of 20 March 2019.
32. On 5 June 2019, the Office of the Chief State Prosecutor notified the Applicant that his request was not approved, because in this case there is no sufficient legal basis for filing a request for protection of legality.

Applicant's allegations

33. The Applicant alleges that the challenged decisions deprived him his fundamental rights and freedoms guaranteed by Article 3 [Equality Before the Law] of the Constitution.
34. The Applicant considers that the creditor caused him damage because as he states the creditor *“has blocked the refrigerators left as collateral, in which case due to this action all my goods have been damaged and the refrigerators have broken down, therefore, in this case the creditor caused material damage, calculating the paid installments higher than the loan amount, therefore it has brought me equal damage”*.
35. The Applicant further alleges that in the circumstances of his case (i) during the enforcement proceedings before the Court and the Private Enforcement Agent there has been a violation of the provisions of the enforcement procedure; and (ii) violation of the provisions of the Law on Contested Procedure, as according to him, the same provisions are appropriately applied in the enforcement procedure. The Applicant in this respect states that he as a party has not been treated equally, thus resulting in a violation of his right guaranteed by Article 3 [Equality Before the Law] of the Constitution.
36. Furthermore, the Applicant requests the Court to annul the decisions of the Basic Court, the Court of Appeals and the conclusions of the Private Enforcement Agent Gj. R.

Admissibility of the Referral

37. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
38. 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.*

[...].”

39. The Court also examines whether the Applicant has fulfilled the admissibility requirements as further specified in Articles: 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...”.

40. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; has exhausted all available legal remedies; has specified the act of a public authority, which he challenges before the Court and submitted the Referral in time.
41. However, the Court also examines whether the Applicant has met the admissibility criteria set out in Rule 39 (2) of the Rules of Procedure, which establishes:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”

42. In this respect, the Court first recalls that the debtors, namely the Applicant and the creditor, namely the PCB, entered into a Loan Agreement. As a result of non-fulfillment of obligations by the debtor, the creditor requested the initiation of enforcement proceedings for the remaining amount of the loan. The Basic Court in Gjakova allowed the enforcement and the case was transferred to the Private Enforcement Agent. Against the decision of the Basic Court, the debtor Z.N filed an objection with the Basic Court where the latter was rejected, his appeal was also rejected by the Court of Appeals. Following the decision on the appeal by the Court of Appeals, the Private Enforcement Agent, through the relevant Conclusions, scheduled public auctions for the sale of the immovable property determined by the Agreement in the amount of 35000 euro. According to the case file, the immovable property was sold to PCB, at the public auction of 15 December 2017, at one third (1/3) of the determined value of the immovable property, namely 11,666.67 euro. As a result, the Private Enforcement Agent issued the Order for the sale of the immovable property. The debtors, namely the Applicant, challenged this Order in the Court of Appeals, which by Decision [Ac. No. 496/18] of 20 March 2019 rejected as ungrounded the debtors' appeal. The Applicant then submitted a proposal to initiate a request for protection of legality at the Office of the Chief State Prosecutor, where the latter did not approve the Applicant's proposal. In the Court, the Applicant challenges the above-mentioned decision of the Court of Appeals, claiming, in essence, that *"the enforcement procedure was unconstitutional and unlawful"*.
43. In this respect, the Court recalls that the Applicant essentially links his allegations (i) to unequal treatment with the other parties to the proceedings and (ii) alleges that the competent authorities, in this case the courts and the Private Enforcement Agent, did not respect the enforcement procedure and thus violates the provisions of the Law on Contested Procedure, as according to him, the same provisions are appropriately applied in the enforcement procedure.
44. With regard to these allegations, and as reflected in the part relating to the Applicant's allegations, beyond the allegation that the decisions of the regular courts are contrary to Article 3 of the Constitution, the Applicant has not submitted before the Court any concrete arguments and/or justifications regarding the violations of his rights alleged by him.
45. In this regard, the Court recalls its case law according to which only the mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms. (See, in this context, the cases of the Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October 2019, paragraphs 30-31).

46. Such a position of the Court is based on the case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution. Based on this case law, and that already consolidated of the Court, the unreasoned allegations or complaints, which are not substantiated with arguments and evidence are declared inadmissible as manifestly ill-founded on constitutional basis. (See ECtHR Guide of 30 April 2019 on Admissibility Criteria; part I. Procedural Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unreasoned complaints: lack of evidence, paragraphs 280 to 283).
47. The Court also recalls that the Court of Appeals addressed the Applicant's allegations by the Decision [Ac. No. 496/18] of 20 March 2019, where among other things emphasized:
- “According to the assessment of the Court of Appeals, the order for sale is correct in accordance with the provision of Article 222 of the LEP, because after the procedure for determining the value of the immovable property, the enforcement body issues the conclusion on the sale of the immovable property by which it determines the value of the immovable property, the manner and conditions of the sale, as well as the time and venue of the sale, if the sale is performed through public auction. The enforcement body in accordance with Article 223 of the LEP, announces the conclusion for the sale of the immovable property in the billboard of the enforcement body with the decision of the enforcement body and in another relevant way. The manner of sale of immovable property is regulated by Article 227 of the LEP, which stipulates that the sale of immovable property shall be performed through verbal public auction, the session for real estate sale shall be held in the building of the enforcement body, if the enforcement body did not determine any other sale venue. The sale session shall be exercised by the enforcement body”.
48. In this regard, the Court considers that the regular courts have addressed and reasoned in their entirety the Applicant's allegations and that the proceedings before the courts in the circumstances of the present case, do not in any way result to have been unfair or arbitrary.
49. As explained above, the Applicant does not bring any additional arguments or reasoning before the Court in support of his allegations of violation of his constitutional rights. Consequently, the Court, based on its Rules of Procedure, namely paragraph 2 of its Rule 39, must declare this Referral inadmissible as manifestly ill-founded on constitutional basis, because the Applicant does not prove or sufficiently substantiate his allegation.
50. The Court finally notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot in itself raise an arguable claim of violation of the right to fair and impartial trial. (See, case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, among other, KI56/17, Resolution of 18 December 2017, paragraph 42).

51. Therefore, in these circumstances, based on the above and taking into account the allegations raised by the Applicant and the facts presented by him, the Court also based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegation of violation of his fundamental rights and freedoms guaranteed by the Constitution and the ECHR.
52. Therefore, the Referral is manifestly ill-founded on constitutional basis, and is to be declared inadmissible in accordance with Article 113.1 and 7 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, in the session held on 7 October 2020, unanimously

DECIDES

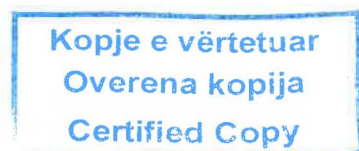
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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