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

Prishtina, on 02 November 2020
Ref. No.:RK 1636/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI135/19

Applicant

Shkodran Hashani

Constitutional review of Judgment Ac. No. 2469/15 of the Court of Appeals of the Republic of Kosovo, of 4 July 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 Shkodran Hashani, residing in the municipality of Obiliq (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [Ac. No. 2469/15] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals), of 4 July 2019, in conjunction with Judgment [C. No. 520/09] of the Basic Court in Prishtina, of 9 December 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] 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 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

5. On 27 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 August 2019, the President appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama – Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).

7. On 2 October 2019, the Court notified the Applicant about the registration of the Referral and requested him to notify the Court whether he is represented by himself before the Court or with a representative.

8. On 9 October 2019, the Applicant notified the Court that he has no representative and that he is represented by himself before the Court.

9. On 29 October 2019, the Court sent a copy of the Referral to the Court of Appeals.

10. On 12 May 2020, the Court notified the Basic Court in Prishtina about the registration of the Referral and requested that the following documents be submitted to the Court:

    a) *Information whether the traffic expertise made at the beginning of the procedure was sent to the Applicant*
    b) *Transcript of the session; and*
    c) *The original case file*

11. The Basic Court in Prishtina, within the stipulated time limit, did not submit the requested documents to the Court.

12. On 8 June 2020, the Court repeated the request to the Basic Court in Prishtina, requesting that the documents referred to in paragraph 10 of this Report be submitted to the Court.

13. On 9 June 2020, the Basic Court in Prishtina submitted the original case file.

14. 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

15. It follows from the case file that on 6 November 2008, on the highway Prishtina-Obiliq, a traffic accident occurred between the Applicant who was employed by the Company N.N.T.SH. "Patroni" based in Malisheva and the person H.S.

16. On 12 March 2009, H.S. had filed a lawsuit with the Basic Court in Prishtina, against *i.* Kosovo Insurance Association - Compulsory Insurance Guarantee Fund in Kosovo, *ii.* N.N.T.SH. "Patroni" based in Malisheva and *iii.* the Applicant, claiming that based on the police report, and photographs of the damaged vehicle, it was established that the accident occurred due to the uncontrolled movements of the work machine driven by the Applicant, and thus caused material damage to the vehicle driven by H.S. Through his lawsuit H.S requested compensation of material damage in the amount of 1110 euro (one thousand one hundred and ten euro) with legal interest from the date of the accident.

17. On 17 November 2011, the Applicant through the response to the lawsuit stated that he challenges the lawsuit because the latter cannot be based on the police record because the latter cannot prove his responsibility in relation to the case that occurred. The Applicant also challenges the amount of the statement of claim, claiming that it has no legal basis.

18. On 21 November 2011, the Kosovo Insurance Association-Compulsory Insurance Guarantee Fund in Kosovo through the response to the lawsuit challenged the lawsuit stating among others "*the evidence presented together with the lawsuit does not represent a sufficient basis for the acceptance of responsibility by the respondent [...] setting from the regulation for registration of motor vehicles the fork is a motor vehicle which is not subject to auto liability insurance*".

19. On 14 December 2011, N.N.T.SH. "Patron", also through the response to the lawsuit, challenges the latter with the reasoning that the Applicant at the time of the accident had been doing his personal work and was not on working hours.

20. On 9 December 2014, the Basic Court in Prishtina by Judgment [C. No. 520/09] approved the lawsuit of H.S and obliged the Applicant to pay the amount of 896,42 euro in the name of compensation for material damage, (eight hundred and ninety-six euro and forty-two cents) with legal interest paid by local banks as for one-year savings deposits.

21. From the reasoning of the Judgment and the minutes of the hearing, it is noted that the Applicant was present at the first preparatory hearing, while in the second preparatory hearing and the main hearing, the Applicant was not present even though he was duly summoned. The Basic Court based its reasoning on the traffic expertise dated 15 October 2014, which proves that the Applicant is guilty, and the expertise dated 27 October 2014, which confirmed the amount of material damage caused to the Applicant, injured party H.S.

22. From the case file it is noticed that the expertise of the traffic accident of 15 October 2014 and the technical expertise on the damage assessment, of 27 October 2014, was sent to the address of the Applicant and the latter was received by N.H father of Applicant on 12 November 2014 (Clarification: The acknowledgment of receipt of expertise is in the original case file submitted by the Basic Court).

23. The Basic Court by Judgment [C. No. 520/09] reasoned that "*The court assessed the opinions of the traffic and machinery expert as a real, objective assessment, based on professional knowledge and decided to give full trust to the opinions.*
Based on this determined factual situation, the court finds that the respondent is responsible for the damage caused to the claimant in his vehicle, during the traffic accident, for which the respondent is obliged to compensate the claimant in accordance with Articles 154,189 and 185 of the LOR.

24. Against the abovementioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging that it was rendered with essential violation of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of substantive law. The Applicant alleges in essence that the expertise which was carried out in relation to his case was not sent to the Applicant and he was not able to comment on them or challenge it. The Applicant alleges that the Basic Court, in accordance with Article 5 of the Law on Contested Procedure, was obliged to give all parties to the proceedings the opportunity to state their views on the expertise.

25. On 4 July 2019, the Court of Appeals, by Judgment [Ac. No. 2469/15] rejected as ungrounded the Applicant's appeal, and thus upheld Judgment [C. No. 520/09] of the Basic Court. The Court of Appeals in its reasoning emphasized "*the challenged judgment does not contain essential violation of the provisions of the contested procedure under Article 182 paragraph 2, points (b), (g), (j), (k) and (m) of the LCP and the substantive law has been applied in a correct manner, which the Court of Appeals takes care ex officio within the meaning of the provision of Article 194 of the LCP, and also does not contain other violations of the provisions of the contested procedure alleged by the party in the appeal*".

26. On 6 August 2019, the Applicant addressed the Office of the Chief State Prosecutor with a proposal to file a request for protection of legality, against the Judgment [Ac. No. 2469/15] of 4 July 2019 of the Court of Appeals, repeating the same allegations he filed with the Court of Appeals.

27. On 19 August 2019, the Office of the Chief State Prosecutor, by Notification [KMLC. No. 135/1019], rejected the Applicant's request for filing a request for protection of legality with the Office of the Chief State Prosecutor.

Applicant's allegations

28. The Court recalls that the Applicant alleges that the challenged Judgment violated his rights protected by Article 31 [Right to Fair and Impartial Trial] of the Constitution.

29. The Applicant alleges that *"- he has not been given the legal opportunity to declare for the expertise of the traffic expert (Article 5, 11 and 362 of the LCP), - that the expertise was not submitted for remarks and additions being instructed in legal aid as a secular party (Article 11 of the LCP), - that the circumstances of the case clearly show that the accident occurred inside the registered workshop ...., and the claimant in the vehicle entered the workshop and -for the same case two proceedings were conducted, according to the lawsuit of the claimant [H.S] and the Kosovo Security Bureau]*

30. Finally, the Applicant requests the Court to annul the challenged decision.

Relevant legal provisions

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Article 5

5.1 The court shall enable each party to make a statement on the claims and allegations submitted by the contentious party.

5.2 Only for the cases determined by this law, the court has the power to settle the claim for which the contentious party was not enabled to make a statement.

Article 11

11.1 The party not represented by a lawyer may receive instructions on procedural actions that are available from the court, each time that it is ascertained that the party is not aware that it can utilize the procedural rights set by this law.

11.2 The court should instruct the party being represented by a lawyer on procedural actions, when considers that representative is not performing his/her duty in a professional manner.

Article 111

111.1 If the addressee is not found at home such document may be given to any adult member of his or her household, who must accept the document. If they are not found at home, the document shall be left with a neighbor, if he or she consents to accept it. It shall be assumed that the service has thereby been effected..

[...]

111.4 Persons to whom were served documents instead to addressee according to the above paragraphs are obliged to present the document to the latter.

Article 182

182.1 Basic violation of provisions of contested procedures exists in case when the court during the procedure didn't apply or wrong application of any of the provisions of this law, while this has or will impact a rightful legal decision.

182.2 Basic violation of provisions of contested procedures exists always:

b) when it is decided on a request which isn't a part of the legal jurisdiction;
[...]
g) if it's contrary to the provisions of this law, the court has based its decision on illegal possession of parties, (article 3. paragraph 3);

i) if any of the parties through illegal activity, especially by not offering the opportunity for a hearing in the court;

j) if in opposition with provisions of this law the court has refused the request of the party that in the procedure use its own language and writing, and follow the procedure in ones own language, and for this reason complaints;

k) if in the procedure as a plaintiff or as the accused has participated a person who couldn't be part of the procedure; when the party which is a legal entity was not represented by the authorized person; when the party with lack of procedural knowledge wasn't represented by a legal representative; when the legal representative, respectively the representative with proxy of the party had no necessary authorization for conducting a procedure, respectively performing specific actions in the procedure if the conducting the proceeding, respectively exercising of special actions in proceeding is not alowed;
[...]
m) if in opposition with law the audience was expelled from the main hearing;

Article 362

362.1 The expert is always summoned for the main hearing session.

362.2 Attached to the invitation to appear in the court, the expert will also get a copy of the order from the article 359 of this law.

Article 367

The court sends written conclusion and the opinion at least eight (8) days before the main hearing session.

Admissibility of the Referral

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

32. 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."

33. The Court further refers to 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.

1. 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...".

34. With regard to the fulfillment of the these criteria, the Court finds that the Applicant is an authorized party; who challenges an act of a public authority, namely Judgment [Ac. No. 2469/15] of the Court of Appeals of 4 July 2019, in conjunction with Judgment [C. No. 520/09] of the Basic Court in Prishtina, of 9 December 2014, after having exhausted all legal remedies. The Applicant has also clarified the rights and freedoms he claims to have been violated and, submitted the Referral within the deadline established by law.

35. In addition to these criteria, the Court also refers to Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) establishes 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."

36. The Court first recalls that the Basic Court in Prishtina by Judgment [C. No. 520/09] approved the lawsuit of H.S and obliged the Applicant to pay to H.S the amount of 896.42 euro in the name of compensation for material damage as a result of the traffic accident caused between the Applicant and H.S. Following the Applicant's appeal, the Court of Appeals, by Judgment [Ac. No. 2469/15] of 4 July 2019, rejected the Applicant's appeal as ungrounded and upheld in entirety the first instance Judgment. The Applicant filed a request for protection of legality against the latter and on 19 August 2019, the Office of the Chief State Prosecutor, by the Notification [KMLC. No. 135/1019] rejected the Applicant's request for filing a request for protection of legality with the Office of the Chief State Prosecutor.

37. In this regard, the Court initially recalls that the Applicant essentially alleges a violation of his constitutional right to fair and impartial trial guaranteed by Article 31 of the Constitution for two reasons: (i) according to the Applicant expertise of the traffic conducted in his case has not been served on the Applicant for remarks, and (ii) the Applicant alleges that the regular courts have erroneously established the factual situation. The Court recalls that Article 31 of the Constitution stipulates that:

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the

media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law..
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.

[...]

38. The Court recalls once again the Applicant's allegations regarding the violation of Article 31 [Right to Fair and Impartial Trial], who in substance complains before the Court that the courts did not submit the traffic expertise conducted in his case emphasizing that "*he has not been given the legal opportunity to comment on the expertise of the traffic expert (Articles 5, 11 and 362 of the LCP), - that the expertise has not been submitted for remarks and additions being instructed in legal aid as a secular party (Article 11 of the LCP).* The Applicant also alleges that the regular courts have erroneously established the factual situation by stating that *"the circumstances of the case clearly show that the accident occurred inside the identified workshop ...., and the claimant in the vehicle entered the workshop".*

39. The Court notes that in addressing the Applicant's allegations, it will apply the standards of case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

40. With regard to the Applicant's first allegation that the regular courts did not submit the expertise of the traffic accident conducted in his case denying him the right to challenge the expertise and to declare himself regarding it, the Court notes from the original file which was submitted by the Basic Court in Prishtina, that the latter were submitted to the Applicant and the latter was received by N.H the Applicant's father.

41. In this regard, the Court refers to paragraph 1 of Article 111 of the Law on Contested Procedure, which states that if the addressee, on whom the document should be served is not found at home, such document may be given to any adult member of his or her household, who must accept the document.

42. In light of all the above, and based on the case file, the Court notes that the expertise of the traffic accident of 15 October 2014 and the expertise of the damage assessment of 27 October 2014, were sent to the Applicant's address and the latter was received by N,H the Applicant's father on 12 November 2014, and consequently the Applicant received the traffic expertise.

43. Furthermore, the Court notes that the Applicant was present at the first preparatory hearing, but not at the main hearing where the accident expertise related to his case was read. Regarding this, the Basic Court in Prishtina, in Judgment [C. No. 520/09] stated "*the respondent did not appear at the main hearing even though he was duly summoned and did not justify his absence in*

any way. For this reason, the Court held the main hearing in the absence of the respondent".

44. Consequently, the Court finds that this allegation of the Applicant is ungrounded.

45. Regarding the Applicant's second allegation that the regular courts have erroneously established the factual situation by stating that *"the circumstances of the case clearly show that the accident occurred inside the registered workshop ...., and the claimant in the vehicle entered the workshop,* The Court considers that the Applicant built his case on the grounds of legality, namely on the allegations of incorrect determination of evidence and facts, made by the Court of Appeals and the Basic Court in Prishtina.

46. However, the Court takes into account the reasoning of the Court of Appeals in its Judgment [Ac. No. 2469/15] of 4 July 2019, which in relation to the evidence, stated the following:

> *"The court reasoned all the facts with decisive weight for the grounds of the statement of claim, and in this regard has reasoned the way the facts were proved, except the non-disputed ones, as well as the way it assessed the evidence for each proven fact. The court has justified all the circumstances with decisive weight, starting from the responsibility of the respondent for compensation of damage, then the circumstances related to the category of damage and consequently the conclusion about the volume of the approved claim. The factual situation in this procedure has been correctly and completely determined also in terms of damage sustained by the claimant due to the accident. In this regard, the assessments given by the first instance court for the probative value and reliability of the traffic expertise of the expert Ylli Koshi, dated 15.10.2014 and the expertise on the assessment of the damage to the claimant's vehicle, of the expert Nexhmi Shala, dated 27.10.2014 is accepted as such by the Court of Appeals, for which this is fair and acceptable conclusion. The Court of Appeals considers that in terms of the substantive-legal provisions referred to by the court of first instance and in accordance with the factual situation established in this procedure, for the approved request in the amount as in the enacting clause of this judgment, the court is of the opinion that the latter is adequate, all this taking into account the damage caused to the claimant and that the amount of money in the name of compensation, will provide the injured party/here the claimant, satisfaction that he with these means will repair to a certain extent his material needs as a result of the damage caused.*

47. In this regard, the Court reiterates that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of *"fourth instance",* which would result in exceeding the limits set by its jurisdiction. In line with the case law of the ECtHR and 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 procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in one way and not in another (See case *Garcia Ruiz v. Spain,* ECtHR, Judgment of 21 January 1999, paragraph 28; and see, also case KI70/11, Applicant *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

48. The Constitutional Court can only consider whether in a proceeding the evidence was presented in a correct way and whether the proceedings before the regular courts in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia,, Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).

49. However, with regard to the Applicant's allegations of a violation of Article 31 of the Constitution, based on the case file, the Court notes that the reasoning given in the Judgment of the Court of Appeals and the Basic Court is clear even after review of all proceedings. The Court also found that the proceedings before the Court of Appeals and the Basic Court were not unfair or arbitrary (see case *Shub v. Lithuania*, No. 17064/06, ECtHR decision of 30 June 2009).

50. During the examination of the Applicant's allegations, the Court of Appeals reasoned that the Judgment of the first instance is fair and lawful, proving the fact that the factual situation determined by the Basic Court is correct and that the traffic accident between the Applicant and H.S happened as a result of the Applicant's mistake and that he is liable for the damage.

51. In the light of the above, the Court further considers that the Applicant did not substantiate that the proceedings before the regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous interpretation of the procedural law. The Court reiterates that the interpretation of law is a duty of the regular courts and is the issue of legality (see, case of the Court KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and see also 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).

52. The Court reiterates that the mere fact that the Applicant does not agree with the outcome of the Judgment of the Court of Appeals or a mere mentioning of articles of the Constitution, is not sufficient for the Applicant to raise an arguable claim of constitutional violation. When such violations of the Constitution are alleged, the Applicants must provide substantiated allegations and convincing arguments (see the case of the Constitutional Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility, of 10 February 2015, paragraph 33).

53. As a result, the Court considers that the Applicant has not substantiated the allegations that the respective proceedings were in any way unfair or arbitrary

or that the challenged decision violated the rights and freedoms guaranteed by the Constitution.

54. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, 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;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Remzije Istrefi- Peci	Arta Rama-Hajrizi

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