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

Prishtina, on 16 November 2020
Ref.No.:RK1641/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI25/20

Applicant

Dashamir Uruçi

Constitutional review of Decision Rev.no.367/2019 of the Supreme Court of Kosovo, of 10 December 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 Dashamir Uruçi, from Shkodra, Republic of Albania (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Decision Rev.no. 367/2019 of the Supreme Court of Kosovo of 10 December 2019, in conjunction with the Decision Ac.no. 3906/19 of the Court of Appeals, of 9 September 2019.

3. The Applicant has received the Decision Ac.no.3906/19 of the Court of Appeals of 9 September 2019, on 19 September 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 5 and 6 of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

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

6. On 21 January 2020, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).

7. On 4 February 2020, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.

8. On 12 February 2020, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Supreme Court.

9. On 5 June 2020, the Court notified the Court of Appeals about the registration of the Referral and requested from it to submit to the Court the acknowledgment of receipt proving the date when the Applicant was served with the Decision Ac.no.3906/19 of the Court of Appeals, of 9 September 2019.

10. On 8 June 2020, the Court of Appeals notified the Court by e-mail that the documents of this case file are located in the Basic Court in Prishtina.

11. On 10 June 2020, the Court notified the Basic Court in Prishtina about the registration of the Referral and requested from it to submit to the Court the

acknowledgment of receipt proving the date when the Applicant has received the Decision Ac.no.3906/19 of the Court of Appeals, of 9 September 2019.

12. On 12 June 2019, the Basic Court in Prishtina submitted to the Court the requested acknowledgment of receipt.

13. On 14 October 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

Summary of facts related to the contested procedure conducted in the regular courts in the Republic of Montenegro

14. On an unspecified date, the Applicant had filed a claim with the Basic Court in Ulqinj, against H.SH, H.D., H.K., H.V., H.SH and HP requesting to be paid a certain amount of money in the name of debt compensation, (the dispute between the parties to the proceedings concerns the disagreements originating from the construction of a building in Montenegro between several persons as co-owners and the Applicant on the other side).

15. On 11 January 2017, the Basic Court in Ulqin by Judgment [P.no.178 / 15] had partially approved the Applicant's claim, deciding as follows: I. to approve the Applicant's claim, in relation to the first respondent H.SH, obliging the latter to pay to the Applicant the amount of 124,800.00 euros, in the name of debt compensation, along with the late interest starting from 1 January 2009 until the final payment, while against the other respondents it rejected the claim as unfounded II. to reject as unfounded the part of the statement of claim concerning the Applicant's request that the defendants in a part of the property are obliged to accept and allow the transfer/registration in the name of the Applicant and thus enable the Applicant to use the disputed property in unhindered manner III. to reject the Applicant's proposal requesting from the above mentioned respondents to pay at least 5,000 euros in the name of guarantee and IV. each party shall bear its own costs.

16. On an unspecified date, the Applicant filed an appeal with the High Court in Podgorica, against Judgment [P.no.178 / 15] of the Basic Court in Ulqin, regarding point II., III. and IV. of the above Judgment, alleging substantial violations of the provisions of the contested procedure, and erroneous determination of the factual situation. Also the first respondent H.SH filed an appeal with the High Court in Podgorica, regarding point I and IV.

17. On 9 February 2018, the High Court in Podgorica, through Judgment [Gzh.3538 / 17-09] decided as follows I. rejected as unfounded the appeals of the Applicant and the first respondent H.SH regarding point I, II, and III of the enacting clause of Judgment [P.no.178 / 15] of the Basic Court in Ulqin; II. point IV) of the judgment concerning the costs of the contested procedure is amended, and the first respondent H.SH is thereby obliged to bear the costs of the court procedure in the amount of 8,100.00 euros.

Summary of facts related to the procedure for recognition of the decision of foreign courts

18. On 29 May 2015, the Applicant submitted a proposal to the Basic Court in Prishtina, for the acceptance and recognition of the decision of the foreign court, respectively of the Judgment [P.no.178 / 15] of the Basic Court in Ulqin, of 11 January 2017.

19. On 3 July 2019, the Basic Court in Prishtina by Decision [CN.no.112/19] rejected the Applicant's proposal for recognition of the decision of the foreign court. The Basic Court in Prishtina in its reasoning assessed that the Applicant's proposal does not meet the legal requirements for accepting and recognizing the decision of the foreign court, arguing that "there is no jurisdiction to recognize and enforce the decision for which the recognition is requested, since the respondent against whom the judgment P.no.178/15 is to be executed according to the judgment and the documents submitted by the proposer, despite being a resident of Ulqin, Republic of Montenegro, has not presented evidence that the respondent is in possession of enforceable assets in the Republic of Kosovo. Further, the Basic Court in Prishtina, referring to the provisions of the Law on Review of Conflict of Laws with the Provisions of Foreign Countries, respectively its Article 86, states that *"The Court following the review of the jurisdiction related to the enforcement of the decision, for which the recognition is requested found that the decision cannot be enforced and that the Basic Court in Pristina, as a domestic court, is incompetent"*.

20. On 30 July 2019, the Applicant filed an appeal with the Court of Appeals against the Decision [CN.no.112 / 19] of the Basic Court in Prishtina, alleging serious procedural violations and erroneous determination of the factual situation.

21. On 9 September 2019, the Court of Appeals, by Decision [Ac.no.3906/19] rejected as unfounded the Applicant's appeal, and confirmed in its entirety the Decision [CN.no.112/19] of the Basic Court in Prishtina, emphasizing that it is correct and based on concrete legal provisions, it is comprehensible and clear. The Court of Appeals in its Decision further adds:

> *The Court of Appeals considers that the court of first instance has acted correctly when rejecting as unfounded the proposal for acceptance and recognition of the decision of the foreign court. Taking into consideration the presumptions for accepting a foreign decision, one of the conditions that must be met is the existence of reciprocity. This condition is considered fulfilled if the foreign state accepts the decisions of the courts of the country under the same presumptions, under which the decisions of such state enjoy acceptance in our state. According to Article 92 of the Law on Review of Conflict of Laws with the Provisions of Foreign Countries, it is defined that "a decision of a foreign court will not be recognized if there is no reciprocity." In the concrete case, the Republic of Kosovo does not have a cooperation agreement with the Republic of Montenegro, and hence they lack the reciprocity.*

The proposer's appeal claim that the Basic Court in Prishtina, based on the positive laws in force, has no right to reject the proposer's proposal for recognition of the foreign decision solely for the fact that it does not possess data on the defendant's property, is considered by this Court to be an unfounded and unsubstantiated claim, based on the fact that the enacting clause of the judgment which is requested to be recognized by the court of the country, does not oblige any of the citizens of the country respectively of the Republic of Kosovo, therefore based on what is stated above there is no basis for recognition of this decision.
Taking into consideration the other appeal claims submitted against the challenged ruling, the court of second instance considers that these allegations are unfounded, since we are not dealing with a substantial violation of the provisions of the Law on Contested Procedure, which this court is obliged to consider ex officio within the meaning of Article 194 of the LCP"

22. On 2 October 2019, the Applicant filed a revision with the Supreme Court, against the Decision [Ac.no.3906/19] of the Court of Appeals, alleging violation of domestic and international substantive law, violation of procedural law and enforcement procedure.

23. On 10 December 2019, the Supreme Court, through Decision [Rev.no.367/ 2019], rejected as inadmissible the revision of the Applicant. The Supreme Court in its Ruling had reasoned. The Supreme Court reasoned that "*pursuant to Article 27 of the mentioned law, the revision may be filed against the decision of the second instance that has taken the final form in the contentious procedure in which it is decided for the statutory, dwelling matters and related to compensation for expropriated real asset.*"

Applicant's allegations

24. The Applicant alleges that the challenged decision violated his rights and freedoms guaranteed by Article 31 [Right to Fair Trial] of the Constitution as well as Articles 5 and 6 of the ECHR.

25. In his Referral the Applicant states that "*we consider that the domestic and international substantive law, civil law contracts, monetary relations under the LCP, the procedural law of the LCP as well as the Enforcement Procedure, have been violated*".

26. With respect to the Decision [CN.no.112/19] of the Basic Court in Prishtina of 3 July 2019, the Applicant alleges that "*the arguments with which my Referral was rejected are absurd. In three different paragraphs, the Court in question requests from me to send evidence to it; it requests that I personally provide data proving that the person in question possesses enforceable registered assets in the Republic of Kosovo.*"

27. The Applicant further states "*As it can be seen, we have three different decisions, with arguments that differ fundamentally, whereby my request to open the way for enforcement was rejected [..] in all these decisions my legal*

requests as well as my material, monetary and property rights, acquired through a regular court process, were not taken into consideration".

28. The Applicant further adds *"in short I have been denied my right to legalize and have recognized a civil-legal court decision on a contract concluded between a citizen of Albania and a citizen of Kosovo [...] The acceptance and enforcement of judicial decisions rendered in regular court proceedings in a foreign state is obligatory to be accepted in any democratic state."*

29. Finally, the Applicant requests from the Court *"to open the legal way for me to initiate enforcement proceedings by having the Judgment of a foreign state accepted by the Courts of the Republic of Kosovo."*

Relevant legal provisions

Law No. 03/L-007 ON OUT CONTENTIOUS PROCEDURE

Judgment strike with revision
Article 27

27.1 In contentious procedure in which it is decided for dwelling matters and related with compensation for expropriated real asset, can be use revision against second step judgment which has taken final form.

27.2 In mentioned juridical matters in paragraph 1 of this article revision is permitted under determined conditions with law for contentious procedure, if it is not foreseen differently by law.

Assessment of the admissibility of the Referral

30. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in 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 refers to Article 47 [Individual Requests] of the Law, which provides:

Article 47 of the Law
[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."

33. In addition, the Court also examines whether the criteria set out in Article 49 [Deadlines] of the Law and Rule 39 [Admissibility Criteria], respectively paragraphs (1) (b) and (c) of the Rules of Procedure, are fulfilled. They provide as follows:

Article 49 of the Law
[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..."

Rule 39 of the Rules of Procedure
[Admissibility Criteria]

"(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, and
[...]".

34. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party challenging an act of a public authority, namely the Decision Rev.no.367/2019 of the Supreme Court of Kosovo, of 10 December 2019 in conjunction with the Decision Ac.no. 3906/19 of the Court of Appeals, of 9 September 201, after having exhausted all legal remedies. In the following, the Court will assess whether the Applicant has submitted the Referral within the deadline provided for by the Law and the Rules of Procedure.

35. The Court recalls that the period of 4 (four) months begins to count from the "last decision" in the procedure of exhaustion of legal remedies by which the Applicant's request has been rejected (see *mutatis mutandis*, the ECtHR case, *Paul and Audrey Edwards v. The Kingdom*). United Nations No. 46477/99, Decision of 14 March 2002).

36. The Court also recalls that the Applicant must exhaust all remedies that are expected to be effective and sufficient. Only effective remedies can be considered by the Court, as the Applicant cannot extend the strict deadlines prescribed by the Law and the Rules of Procedure, by trying to use legal

remedies in institutions and courts, which do not have legal jurisdiction to provide protection of rights for which the Applicant complains. (see, *mutatis mutandis*, the ECtHR Case, *Fernie v. The United Kingdom*, No. 14881/04, Decision of 5 January 2006).

37. In this respect, the Court notes that the proceedings against the Applicant conducted before the regular courts regarding the merits of his case, namely the recognition of the decisions of foreign courts have been concluded by the Decision [Ac.no.3906/19] of the Court of Appeals, of 9 September 2019.

38. In this regard, the Court refers to the Decision of the Supreme Court [Rev.no.367 / 2019] whereby the revision of the Applicant was rejected as inadmissible, by ascertaining that: *"pursuant to Article 27 of the mentioned law, the revision may be filed against the decision of the second instance that has taken the final form in the contentious procedure in which it is decided for the statutory, dwelling matters and related to compensation for expropriated real asset."*

39. The Court recalls that, in the Applicant's case, following the receipt of Decision [Ac.no.3906/19] of the Court of Appeals, of 9 September 2019, nothing has prevented the Applicant from addressing the Constitutional Court. However, he has used legal remedies, such as the revision which has not been provided by the law.

40. Consequently, as the "final decision", according to Article 49 of the Law will normally be the Decision [Ac.no.3906/19] of the Court of Appeals, of 9 September 2019, rejecting the Applicant's appeal against the decision of the first instance court which was final and could not be appealed (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, No. 46477/99, ECtHR, Judgment of 14 March 2002).

41. In this regard, the Court recalls that the Decision [Ac.no.3906/19] of the Court of Appeals was issued on 9 September 2019. Upon the request of the Court, the Basic Court in Prishtina submitted to the Court the acknowledgment of receipt, where it can be noticed that the Applicant had received the aforementioned Decision of the Court of Appeals was received on 19 September 2019, whereas he has submitted the Referral to the Court on 21 January 2020.

42. Consequently, the Court concludes that the Applicant's Referral concerning the Decision [Ac.no.3906/19] of the Court of Appeals, of 9 September 2019 was submitted after the legal deadline of 4 (four) months.

43. The Court recalls that the objective of the 4 (four) month legal deadline, under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty by ensuring that cases raising constitutional issues are dealt with within a reasonable time and that the past decisions are not continually open to challenge (See the case, *O'Loughlin and Others v. the United Kingdom*, Application no. 23274/04, ECtHR, Decision of 25 August 2005, see also: the case No. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).

44. For the foregoing reasons, the Court finds that the Referral does not meet the procedural criteria for admissibility required by Article 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, therefore, as such the Referral must be declared inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 14 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**

Bajram Ljatifi Arta Rama-Hajrizi

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