



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

Prishtina, 3 December 2020
Ref. No.:RK 1649/20

This translation is unofficial and serves for information purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No. KI107/20

Applicant

Ismail Guri

**Constitutional review
of Decision Rev. No. 52/2018, of 17 May 2018 of the Supreme Court of the
Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, 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 Ismail Guri, from the Municipality of Kaçanik (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Rev. No. 52/2018] of 17 May 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).
3. The Applicant was served with the challenged Decision on 12 June 2018.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Decision, whereby the Applicant's fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) been violated. The Applicant has not accurately clarified what fundamental rights and freedoms guaranteed by the Constitution have been violated by the challenged Decision.

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 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 Court

6. On 3 July 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 July 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
8. On 10 July 2020, the Court notified the Applicant and the Supreme Court about the registration of the Referral. On the same date, the Court also requested the Branch in Kaçanik of the Basic Court in Ferizaj (hereinafter: the Basic Court) to notify the Court about the date on which the Applicant was served with the challenged Decision of the Supreme Court.
9. On 23 July 2020, the Basic Court submitted to the Court the acknowledgment of receipt showing that the Applicant was served with the challenged Decision on 12 June 2018.
10. On 11 November 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

11. The Applicant submits a Referral to the Court for the second time. The Court will further summarize the facts regarding the current Referral KI107/20 as well as the first Referral KI87/14, insofar as they relate to the current Referral KI107/20.

Proceedings regarding the lawsuit for confirmation of the pre-emption right regarding some cadastral parcels

12. On 13 May 2004, the Applicant filed a lawsuit with the Municipal Court of Kaçanik (hereinafter: the Municipal Court), seeking to establish the right of priority of purchasing cadastral parcel 532/9 and 532/10 in the place called "Dushkaja" in the Cadastral Zone in Kaçanik, as well as the cancellation of the Sale-purchase Contract regarding the same plots between third parties, namely J.H. and M.D. (hereinafter: the contested parcels).
13. On 23 November 2004, the Municipal Court by Judgment [C. No. 95/2004], rejected as ungrounded the Applicant's lawsuit and certified the Contract of Sale between third parties in relation to the disputed cadastral parcels. By this Judgment, the Municipal Court, *inter alia*, stated that (i) the contested parcels are included in the list of parcels declared as construction land, and consequently are included in the urban plan area of the Municipality of Kaçanik; and (ii) consequently, based on the Law on Transfer of Real Estate, the right of pre-emption belongs to the Municipal Assembly and that the respondent, J.H., has respected this right by submitting to the Municipal Assembly the first bid for purchase, which was rejected.
14. On an unspecified date, the Applicant filed an appeal with the District Court in Prishtina (hereinafter: the District Court) against the abovementioned Judgment of the Municipal Court, alleging essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, and erroneous application of substantive law, with the proposal that the challenged Judgment be quashed and the case be remanded for retrial.
15. On 10 December 2007, the District Court, by Judgment [Ac. No. 65/2005], rejected the Applicant's appeal as ungrounded and upheld the challenged Judgment of the Municipal Court.
16. On an unspecified date, the Applicant filed a revision with the Supreme Court against the Judgment [Ac. No. 65/2005] of the District Court in conjunction with Judgment [C. No. 95 / 2004] of the Municipal Court.
17. On 18 December 2008, the Supreme Court, by Judgment [Rev. No. 95/2008], rejected the request for revision, finding, *inter alia*, that "[...] judgments of lower courts have correctly applied the substantive provisions and the abovementioned judgments do not contain essential violations of the provisions of the contested procedure referred to in the revision".

The first request of the Applicant for the repetition of the procedure regarding the abovementioned lawsuit for the confirmation of the pre-emption right regarding the

contested parcels. This procedure was challenged by the Applicant before the Court by Referral KI87/14

18. On 29 April 2009, the Applicant filed a request for repetition of the proceedings with the District Court, alleging that based on Article 232 (Repeating procedures) of Law No. 03/L-006 on Contested Procedure (hereinafter: the LCP), there was new evidence that the judge who participated in rendering Judgment [C. No. 95/2004] of 23 November 2004 of the Municipal Court, was biased because he was the “*nephew of the respondent*”.
19. On 4 April 2011, the District Court, by Decision [Ac. No. 534/2009], rejected as ungrounded the Applicant’s request for repetition of procedure.
20. On an unspecified date, the Applicant filed an appeal with the Supreme Court, alleging erroneous and incomplete determination of factual situation and erroneous application of substantive law, with the proposal that the request for repetition of procedure be approved and that the appealed Decision be quashed or modified.
21. On 5 November 2013, following the reorganization of the judicial system in Kosovo in 2013, the Applicant’s appeal was referred to the Court of Appeals, which by Decision [CA. No. 5315/2012], rejected the Applicant’s appeal as ungrounded, and upheld the Decision [Ac. No. 534/2009] of the District Court.
22. On an unspecified date, the Applicant addressed the State Prosecutor with a proposal to initiate a request for protection of legality against the Decision [CA. No. 5315/2012] of the Court of Appeals in conjunction with the Decision [Ac. No. 534/2009] of the District Court.
23. On 10 February 2014, the State Prosecutor by [Notification KMLC No. 7/14] rejected the Applicant’s proposal to submit a request for protection of legality.
24. On 15 May 2014, the Applicant submitted Referral KI87/14 to the Court, requesting constitutional review of the Notification [KMLC. No. 7/14] of the Office of the Chief State Prosecutor of 10 February 2014.
25. On 8 December 2014, the Court declared the Applicant’s Referral inadmissible as manifestly ill-founded on constitutional basis.

Applicant’s second request for repetition of the procedure related to the above mentioned lawsuit for confirmation the pre-emption right regarding the contested parcels which the Applicant challenges in the Court by present Referral KI107/20

26. On 18 September 2015, the Applicant again filed a request for repetition of procedure with the Court of Appeals, alleging that based on point d of paragraph 1 of Article 232 of the LCP, there was new evidence that the judge who had participated in rendering Judgment [C. No. 95/2004] of 23 November 2004 of the Municipal Court, was involved in the commission of a criminal offense.
27. On 26 November 2015, the Court of Appeals by the Decision [CN. No. 72/2015], deciding through the individual judge, rejected as ungrounded the Applicant’s

request for repetition of procedure in relation to the abovementioned Judgment of the Municipal Court.

28. On an unspecified date, the Applicant filed an appeal against the above-mentioned Decision of the Court of Appeals with the Court of Appeals.
29. On 9 January 2018, the Court of Appeals by the Decision [AC. No. 4981/15], deciding through the relevant panel, rejected as ungrounded the Applicant's appeal and upheld the Decision [CN. No. 72/2015] of the Court of Appeals.
30. On 12 February 2018, against the Decisions [CN. No. 72/2015] and [AC. No. 4981/15] of the Court of Appeals, the Applicant filed a revision with the Supreme Court, alleging essential violation of the provisions of the contested procedure, and erroneous application of substantive law, with the proposal that the impugned decision be quashed and the case be remanded for retrial.
31. On 17 May 2018, the Supreme Court, by the Decision [Rev. No. 52/2018], rejected the request for revision as ungrounded, stating, *inter alia*, that in the circumstances of the present case, none of the requirements of Article 232 of the LCP for the repetition of the procedure had been met, and that "*the claimant has not presented any evidence that would affect the rendering of the most favorable decision and that these facts and evidence were subject of assessment in the decision on this legal matter by the court of lower instance*".

Applicant's allegations

32. The Applicant alleges that the Decision [Rev. No. 52/2018] of 17 May 2018 of the Supreme Court, which relates to the procedure regarding the second request for repetition of the procedure relating to the above-mentioned lawsuit for confirmation of the pre-emption right, was rendered in violation of his constitutional rights and freedoms.
33. The Applicant has not accurately clarified what fundamental rights and freedoms guaranteed by the Constitution he claims to have been violated by the challenged Decision. The Applicant before the Court states that (i) the judge who decided on his lawsuit by Judgment [C. No. 95/2004] of 23 November 2004 of the Municipal Court, was biased and "*intentionally did not correctly apply the substantive law, namely Article 19 of the Law on Transfer of Real Estate*"; and (ii) the evidence presented against this judge through the request for repetition of the procedure was not considered by the respective courts.
34. Before the Court, the Applicant also states that (i) "*the Prosecution of Prizren also found actions of falsification of documents, which I received in 2015, I do not remember the exact date, but unfortunately these actions were taken after the decision of the Constitutional Court [Case KI87/14] now that new evidence has emerged regarding this case, I submit this referral once again to the Constitutional Court.*"; and requires that (ii) "*this referral be considered and approved*"; and (iii) "*the law and the constitution be applied, because so far the latter have been constantly violated*".

Admissibility of the Referral

35. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure, have been met.
36. 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.”

37. The Court also refers to the admissibility criteria, as further specified in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests] 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 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 [...].”

38. With regard to the fulfillment of these criteria, the Court initially emphasizes that the Applicant is an authorized party, who challenges an act of a public authority, namely the Decision [Rev. No. 52/2018] of 17 May 2018 of the Supreme Court, after having exhausted all legal remedies provided by law. However, the Court notes that contrary to the requirements of Article 49 of the Law, the Referral to the Court was submitted out of the legal deadline of four (4) months.
39. In this regard, the Court notes that beyond the four (4) month criteria set out in the Law for filing the Referrals before the Court according to the procedure established in paragraph 7 of Article 113 of the Constitution, namely individual referrals, is also item (c) of paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure, which establishes as follows::

Rule 39
(Admissibility Criteria)

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

[...]

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 [...].”

40. In the circumstances of the present case, the Court recalls that the Applicant challenges the Decision [Rev. No. 52/2018] of 17 May 2018 of the Supreme Court. The acknowledgment of receipt submitted to the Court by the Basic Court confirms that the Applicant was served with the challenged Decision on 12 June 2018. The Applicant submitted his Referral to the Court on 3 July 2020, more than two (2) years after issuance of the challenged act. Therefore, the Court finds that the Applicant’s Referral was submitted after the legal deadline of four (4) months provided by Law and Rules of Procedure, and is therefore inadmissible for review.
41. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to constitutional review. (See, among other authorities, case of ECtHR *Sabri Güneş v. Turkey*, Judgment of 29 June 2012, paragraph 39; see also, among other, cases of the Court KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24 and KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39).
42. In conclusion, for the reasons elaborated above, the Court finds that the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, therefore, the Court cannot examine the merits of the case, namely, if by the challenged Decision the constitutional rights of the Applicant have been violated.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 11 November 2020, unanimously:

DECIDES

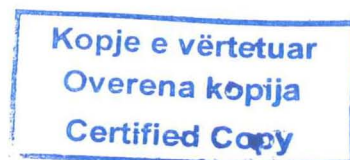
- I. TO DECLARE the Referral inadmissible;
- I. TO NOTIFY this Decision to the Parties;
- II. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani

Arta Rama-Hajrizi



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