



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

Prishtina, on 5 February 2021
Ref. no.:RK1700/21

This translation is unofficial and serves for information purposes only

RESOLUTION ON INADMISSIBILITY

in

Case no. KI124/20

Applicant

MuhamedAli Ceyşülmedine

**Constitutional review of Judgment UZVP. ARJ. no. 139/2019 of the
Supreme Court, of 18 November 2019**

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 MuhamedAli Ceyşülmedine with residence in the Municipality of Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [UZVP. ARJ.no.139/2019] of 18 November 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) regarding Resolution [A.A.no.534/2018] of 8 May 2019 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and the Resolution [A.no. 435/13] of 5 June 2018 of the Department for Administrative Matters of the Basic Court in Prishtina (hereinafter: the Basic Court).
3. The Applicant received the challenged Judgment on 28 July 2020.

Subject Matter

4. The subject matter is the constitutional review of the above Judgment of the Supreme Court which allegedly violates the Applicants' fundamental rights and freedoms guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 11 August 2020, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral submitted by mail.
7. On 26 August 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 3 September 2020, the Court notified the Applicant of the registration of the Referral and requested him to submit the completed Referral Form as well as to submit copies of (i) the challenged Judgment [UZVP. ARJ. no. 139/2019] of 18 November 2019 of the Supreme Court; (ii) Resolution [A.A.no.534/2018] of 8 May 2019 of the Court of Appeals; (iii) Resolution [A. no. 435/13] of 5 June 2018 of the Basic Court; (iv) Decision [10/2013] of 21 January 2013 of the Civil Registration Agency within the Ministry of Internal Affairs (hereinafter: the Civil Registration Agency) ; (v) Decision [200/1606] of 23 December 2011 of the Office of Civil Status in Prizren (hereinafter: the Office of Civil Status); and (vi) the appeal filed with the Court of Appeals and the request for extraordinary review of the judicial decision filed with the Supreme Court.

9. On 16 September 2020, the Court received the documents requested from the Applicant.
10. On 29 September 2020, the Court (i) sent a copy of the Referral to the Supreme Court; and (ii) sent a request to the Basic Court to submit the receipt which proves when the Applicant received the challenged Judgment of the Supreme Court.
11. On 30 September 2020, the Basic Court submitted the requested receipt, which proves that the Applicant had received the challenged Judgment of the Supreme Court on 28 July 2020.
12. On 11 November 2020, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. Based on the case file, in 2011, the Applicant's mother had passed away. As a result, the Applicant filed a request with the Civil Registry Office for the issuance of a Death Certificate of his deceased mother, which certificate he received on 19 December 2011.
14. On an unspecified date, as a result of his dissatisfaction with the surname noted "*Cezülmedini*" in the Death Certificate of his deceased mother, the Applicant submitted a request to the Civil Registry Office to correct her surname in the Basic Birth Register, in the Marriage Register, and in the Basic Death Register. In his Referral the Applicant specifically requested that his mother's surname noted "*Cezülmedini*" be corrected to "*Ceyşülmedine*".
15. On 23 December 2011, the Director of Administration at the Office of Civil Status by Resolution [no. 200/1606] rejected as ungrounded the Applicant's request for correction of his mother's surname in the relevant registers. By this Resolution was reasoned that in the Marriage Certificate of 17 March 1941, in the Birth Certificate as well as in the Death Certificate, the surname of his deceased mother is "*Cezülmedini*" and not "*Ceyşülmedine*".
16. On 13 January 2012, the Applicant filed a complaint with the Civil Registration Agency against the above mentioned Resolution of the Department of Administration of the Office of Civil Status.
17. On 21 January 2013, the Commission for Review of Complaints of the Civil Registration Agency, by the Decision [no. 10/013] rejected the Applicant's complaint as ungrounded, upholding the Resolution [no. 200/1606] of 23 December 2011 of Civil Registry Office.
18. Based on the case file, it results that on 19 March 2013, the Applicant had filed a claim with the Supreme Court. On 2 September 2013, the Supreme Court had notified the Applicant that as a result of the entry into force of Law no. 06/L-

054 on Courts, competent for his claim is the Basic Court. Consequently, on 4 September 2013, the Applicant had filed a claim with the Basic Court.

19. On 28 January 2014, the Basic Court by Resolution [P.no. 2237/12], declared itself not competent in this legal matter and dismissed the Applicant's claim. The Basic Court, inter alia, had found that "*[...] it is clear that the municipal body is competent for deciding on the request on errors and correction of data in the registry books and that the procedure which is applied for these requests is the administrative procedure as well as the act which is rendered as a result of this procedure, represents an administrative act*".
20. On 28 January 2014, the Applicant filed a request with the Basic Court for exemption from "*the obligation to pay court fees*" for filing an appeal against the Resolution [P.no. 2237/12] of 28 January 2014, while on 20 February 2014, against the abovementioned Resolution of the Basic Court, the Applicant filed an appeal with the Court of Appeals, stating, inter alia, that (i) based on the letter of 2 September 2013 of the Supreme Court, whereby he was notified that the Basic Court had jurisdiction over his claim, on 4 September 2013, he had filed a claim with the Basic Court; and (ii) the finding of the Basic Court that it is not competent to hear his case is inconsistent with this letter of the Supreme Court. Finally, the Applicant requested the Court of Appeals to approve his appeal, repealing the challenged Resolution of the Basic Court and remanding his case for retrial.
21. On 13 June 2014, the Basic Court by Resolution [P.no. 2237/12], rejected the Applicant's request for exemption from payment of court fees. The Applicant filed an appeal against this Resolution with the Court of Appeals.
22. On 11 February 2019, the Court of Appeals, by Resolution [Ac. no. 3787/14] (i) rejected as unfounded the Applicant's complaint against Resolution [P.no. 2237/12] of 13 June 2014, regarding the request for exemption from the payment of court fees; while (ii) it upheld the Applicant's appeal against the Resolution [P.no. 2237/12] of 28 January 2014, whereby the Basic Court had declared itself not competent and remanded the case to the Basic Court for retrial.
23. Regarding the Resolution [P.no. 2237/12] of 28 January 2014 of the Basic Court, the Court of Appeals, inter alia, noted that (i) based on the legal advice given in the Decision of the Civil Registration Agency, the Applicant had been instructed to file a claim in administrative dispute within thirty (30) days with the Supreme Court; and (ii) the Applicant had used this remedy, and consequently on 2 September 2013, the Supreme Court was notified that the Basic Court was competent in this administrative matter. Consequently, the Court of Appeals decided to remand the case to the Basic Court for retrial "*with the suggestion that in re-proceeding of the case, it assess the competence and if it assesses that the Civil Division is not competent then send the case to the relevant department of the same court.*"

24. On 5 June 2018, the Basic Court, by the Resolution [A.no.435/13] dismissed the claim of the Applicant due to non-payment of court fees. The Basic Court, inter alia, noted that (i) the initial claim in this court was filed on 29 March 2013; whereas (ii) on 1 January 2017, the Applicant was notified of the payment of the court fee, based on which it must be paid within fifteen (15) days, “*under threat of dismissal of the claim*”.
25. On 7 September 2018, the Applicant filed an appeal with the Court of Appeals against the above mentioned Resolution claiming that he was exempted from paying the court fee.
26. On 8 May 2019, the Court of Appeals, by the Resolution [A.A.no. 534/2018] dismissed the Applicant’s appeal as out of time. The Court of Appeals, inter alia, stated that (i) based on the receipt, the challenged Resolution of the Basic Court was served on the Applicant on 16 August 2018; (ii) pursuant to paragraph 2 of Article 49 (Proceeding according to the legal remedies) of Law no. 03/L-202 on Administrative Conflicts (hereinafter: LAC) and relevant legal advice in the challenged Resolution, the Applicant had the right to file his appeal fifteen (15) days after receiving the challenged Resolution, respectively until 31 August 2018. Consequently, the Court of Appeals, referring to the date of submission of the Applicant’s appeal by mail on 7 September 2018, found that the appeal was filed after the time limit set by law, and consequently based on sub-paragraph 1 of Article 34 [no title] of LAC, dismissed the same as out of time.
27. On an unspecified date, the Applicant filed with the Supreme Court a request for extraordinary review of the abovementioned Resolution claiming “*unfair resolution*”, “*incomplete, superficial and deficient reasoning*”, and “*human rights violations and discrimination*”.
28. On 18 November 2019, the Supreme Court by the Judgment [UZVP.ARJ. no. 9/2019] rejected the Applicant’s request for extraordinary review of the abovementioned Resolution of the Court of Appeals as unfounded, upholding the decision made by the Court of Appeals.

Applicant’s allegations

29. The Applicant alleges that the Judgment [UZVP. ARJ. no. 139/2019] of 18 November 2019 of the Supreme Court has been issued in violation of his fundamental rights and freedoms guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.
30. The Applicant states, inter alia, that (i) the Supreme Court did not take into account his reasoning that the appeal filed after the deadline to the Court of Appeals was as a result of his illness, in connection with which the necessary evidence was submitted; (ii) his mother’s surname is forged by an official of the Civil Registry Office, stating that all necessary evidence regarding the correct surname of the family had been submitted to the Basic Court through his claim of 4 September 2013; and (iii) “*from the Municipality of Prizren to the Supreme*

Court, the people in these institutions deprive me of my basic human rights, do not allow our family name that was forged by a criminal to be corrected.”

31. Finally, the Applicant addresses the Court with the following request: *“I and other persons with the surname CEYSULMEDINE, wish that our forged surname CEZULMEDINI be deleted from the Civil Death Register and Birth Register, and be registered as it was. While our surname was CEYSULMEDINE, as evidenced by the attached certificates and ID cards, the forger forged this surname sometime in 2008, whereby this is ascertained by comparing the handwriting and writing ink with the other completed sections. I wish that the Civil Service in Prizren has submitted to you for review the Civil Status Register or a photocopy of the page from the Civil Status Register regarding our forged surname”.*

Relevant legal provisions

Law No. 03/L-202 on Administrative Conflicts

Article 34 No Title

- 1. The court shall disprove with a decision, if it ascertains that:
1.1. the claim has been submitted after the timeline or it is premature;
[...]*

Article 49 (Procedure according to the legal remedies)

- 1. Appeal against the court decision, is submitted to the competent court in the manner determined in Article 28 of this law.
2. The claim shall be submitted within a time limit of fifteen (15) days, from day of receipt of the court decision.
[...]*

Assessment of the admissibility of the Referral

32. The Court initially examines whether the application has met the admissibility criteria set out in the Constitution and further specified by the Law and the Rules of Procedure.
33. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

*“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.”*

34. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria, as set out in the Law. In this regard, the Court 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.
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...”

35. As to the fulfilment of these criteria, the Court considers that the Applicant is an authorized party, who challenges an act of public authority, respectively the Judgment [UZVP.ARJ.no.139/2019] of 18 November 2019 of the Supreme Court. The Applicant has also clarified the rights and freedoms he alleges to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
36. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in paragraph (2) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. Rule 39 (2) provides in particular that:

Rule 39
(Admissibility Criteria)

“(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.”

37. This rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) but also of the Court, enables the latter to declare inadmissible as “*manifestly ill-founded*” a referral in its entirety or only with respect to any specific claim that a referral may contain. Based on the case law of the ECtHR, the “*manifestly ill-founded*” allegations can be categorized into four distinct groups: (i) claims that qualify as claims “*of the fourth degree*”; (ii) claims categorized by “*apparent or obvious absence of violation*”; (iii) “*unsupported or unreasonable*” claims; and finally, (iv) “*confusing and vague*” claims. (See more precisely for the concept of inadmissibility on the basis of a claim assessed as “*manifestly ill-founded*”, and the specifics of the above four categories of claims qualified as “*manifestly ill-founded*”, ECtHR Practical Guide on Admissibility Criteria of 30 April 2020; part III. Inadmissibility based on merit; A. Manifestly ill-founded claims, paragraphs 275 to 304).
38. In the context of assessing the admissibility of the Referral, respectively, in assessing whether it is manifestly ill-founded on constitutional grounds, the Court will first recall the essence of the case contained in this Referral and the respective allegations of the Applicant, in the assessment of which, the Court will apply the standards of case law of the ECtHR, in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
39. The Court recalls that the circumstances of the present case relate to the Applicant’s request to the Office of Civil Status in the Municipality of Prizren for the issuance of the Death Certificate of his late mother. The Applicant, dissatisfied with the surname placed in this certificate, in the Office of Civil Status in the Municipality of Prizren submitted a request for correction of the surname in Basic Birth Register, Marriage Register and Basic Death Register. The Civil Registry Office and the Complaints Review Commission at the Civil Registration Agency rejected the Applicant’s complaint as ungrounded. The Applicant subsequently addressed the regular courts which also rejected his request as ungrounded. The first, namely the Basic Court, dismissed it for non-payment of court fees; the second, namely the Court of Appeals, dismissed it as inadmissible; while the Supreme Court upheld the Resolution of the Court of Appeals regarding the out of time limit appeal. The Applicant, as explained above, challenges these findings before the Court, alleging violation of Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution. In support of the allegations on violation of these constitutional Articles, the Applicant states that (i) the Supreme Court did not take into consideration his reasoning that the appeal filed after the deadline to the Court of Appeals was as a result of his illness; and (ii) the surname of his deceased mother is forged, requesting from the Court respective “*correction of the surname*”.
40. The Court, based on its case law and that of the ECtHR, considers that the Applicant’s allegations are “*unsupported or unsubstantiated*” allegations. This is because the Applicant only mentioned the violation of the Articles of the Constitution, providing no reasoning and no substantiation for his allegations about the way the challenged Judgment of the Supreme Court, including the

decisions of the lower courts, may have resulted in a violation of his fundamental rights and freedoms guaranteed by the Articles 3, 24, 31 and 54 of the Constitution, respectively.

41. The Court recalls that it has repeatedly stated that merely mentioning an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as argument to activate the protection machinery provided by the Constitution and the Court, as an institution that takes care of the respect of human rights and freedoms. (See, in this context, Court cases KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31; see also the ECtHR Guide on Admissibility Criteria of 30 April 2020; part I. Inadmissibility based on merit; A. Manifestly ill-founded claims; 4. Unsubstantiated complaints: lack of evidence, paragraphs 300 to 303).
42. The Court also recalls that, pursuant to Article 48 of the Law and paragraphs (1) (d) and (2) of Rule 39 of its Rules of Procedure and its case law, it has consistently emphasized that (i) the parties have an obligation to clarify accurately and adequately present the facts and allegations; and also (ii) to prove and sufficiently substantiate their allegations of violation of constitutional rights or provisions. In the circumstances of the present case, the Court, based on the above clarifications, considers that this is not the case.
43. Therefore, the Court finds that the Applicant's allegations of violation of Articles 3, 24, 31 and 54 of the Constitution, are claims "*unsupported or unsubstantiated*", and consequently, inadmissible as manifestly ill-founded on constitutional grounds, as defined by paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rule 39 (2) of the Rules of Procedure, on 20 January 2021, unanimously:

DECIDES:

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

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani



Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only