



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

Prishtina, on 22 March 2021
Ref.No:RK 1733/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI104/20

Applicant

Ejup Koci

**Constitutional review of proceedings in the Basic Court of Mitrovica-
Branch in Skenderaj, with respect to the case C.no.256/2018**

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 Ejup Koci (hereinafter: the Applicant), residing in Skenderaj.

Challenged decision

2. The Applicant does not challenge any specific act of the public authorities. He challenges the length of the proceedings with respect to the trial of case C. no. 256/2018, which is ongoing in the Basic Court in Mitrovica – Branch in Skenderaj (hereinafter: the Basic Court).

Subject matter

3. The subject matter of the Referral is the constitutional review of the length of proceedings with respect to the trial of the case C.nr. 256/2018.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 [Processing Referrals] and 47[Individual Requests] of Law on the Constitutional Court of the Republic of Kosovo Law, No. 03/L-121 (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 30 June 2020, the Applicant submitted the Referral to the Court.
6. On 27 August 2020, the Applicant submitted an additional document.
7. On 6 July 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of Judges: Arta Rama Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu Krasniqi.
8. On 21 July 2020, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Basic Court.
9. On 1 October 2020, the Applicant submitted to the Court several additional documents.
10. On 10 February 2021, 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

11. The Applicant is submitting a Referral to the Court for the fourth time.
12. In connection to the first Referral, on 8 September 2017, the Applicant filed the Referral KI109/17 with the Court, whereby he challenged the excessive length of the proceedings, namely the prolongation of the proceedings for deciding in the civil case [C.no.0355/2011], which related to the expropriation of immovable properties due to the construction of the inter-municipal road

Skenderaj-Vushtrri. The Applicant, in that case, alleged that the regular courts violated his constitutional rights guaranteed by Articles: 22[Direct Applicability of International Agreements and Instruments], 23[Human Dignity] and 46 [Protection of Property] of the Constitution, as well as Article 6 [Right to a fair trial], in conjunction with Article 13 [Right to an effective remedy] of the ECHR. On 30 May 2018, the Court issued a Resolution on Inadmissibility no. KI109/17, whereby it concluded that the Applicant did not sufficiently prove his allegation for a violation of the fundamental rights guaranteed by the Constitution and the ECHR (namely the right to a fair trial, within reasonable time).

13. In connection to the second Referral, on 22 October 2018, the Applicant submitted the Referral no. KI161/18 with the Court, whereby he challenged the Decision [Rev. No. 105/2018] of the Supreme Court alleging that his right of access to court was not respected, because the Court of Appeals and the Supreme Court did not take into consideration the evidence presented by him. In that case, the Applicant alleged that the regular courts violated his constitutional rights guaranteed by Articles: 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46[Protection of Property], 54 [Judicial Protection of Rights], 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, as well as Article 6 [Right to a fair trial] and Article 1 of Protocol no. 1, of the ECHR. On 23 July 2019, the Court declared the Referral inadmissible since the Referral was not submitted within the legal deadline.
14. In connection to the third Referral, on 17 April 2019, the Applicant submitted the Referral no. KI64/19, whereby he challenged the Decision [Cno. 204/2015] of the Basic Court. On 26 July 2019, the Applicant filed a request for withdrawal of Referral no. KI64/19. The Court, in this case, by referring to its case law, assessed that there are no convincing reason to proceed with the review of the Referral for constitutional review of the challenged Decision, despite the Applicant's request for withdrawal his Referral. On 25 September 2019, the Court approved the request for withdrawal of the Referral no. KI64 / 19.

Case facts in relation to the current Referral KI104/20

15. Based on the documents contained in the Referral, it results that on 7 July 2015, the Applicant filed a claim with the Basic Court for confirmation of the boundary (borderline) of the immovable property as well as confirmation of ownership as a usurped part.
16. On 17 January 2017, the Basic Court by Decision [Cno. 204/2015] returned the claim to the Applicant for supplementation and correction.
17. On 27 January 2017, the Applicant responded to the request of the Basic Court for supplementing the claim.
18. On 12 April 2017, the Applicant submitted an additional document to the Basic Court and requested expedition of proceedings for reviewing his case.

19. On 27 April 2017, the Basic Court by Decision [Cno.204/2015] suspended the contested procedure of the Applicant and instructed the latter to initiate the procedure for review of the inheritance because in the challenged property, in addition to the Applicant there were also other owners. Among other things, the Basic Court stated that once the owners of the disputed property are known, there can be initiated the legal proceedings according to the rules of the contested procedure.
20. On 17 May 2018, the Applicant addressed the Basic Court seeking resumption of the suspended procedure by Decision [Cno. 204/2015] of 27 April 2017, on the grounds that the Basic Court by Decision [Tc.no.33/18] of 27 April 2018 had announced the heirs in the disputable property.
21. On 17 May 2018, the Applicant submitted an additional document to the Basic Court requesting the resumption of the suspended procedure, a request which he had repeated several times, on: 4 June 2018; 14 August 2018; and on 7 February 2019,
22. On 25 February 2019, the Basic Court informed the Applicant that the case [C.no.204/2015] is in the procedure and that from now on it is identified with a new number [C.no. 256/2018].
23. On 4 April 2019, the Applicant requested from the Basic Court to review his case [C.no.256/2018].
24. On 21 June 2019, the Applicant requested from the Basic Court to review his case [C.no.256/2018].
25. On 9 July 2019, the Basic Court requested from the Applicant to provide the correct address of the opposing party H.K. within a term of 15 days, in order to send the summons for the next hearing to it.
26. On 15 July 2019, the Applicant requested from the Basic Court to have issued a court certificate in order to obtain the correct address of the opposing party H.K.
27. On 29 October 2019, the Applicant requested from the Basic Court to inform him regarding the current status of his case.
28. On 11 November 2019, the Applicant again requested from the Basic Court to inform him about the current status of his case.
29. On 23 January 2020, the Basic Court informed the Applicant that his case was being considered as a matter of priority and that a hearing would be scheduled soon.
30. On 4 February 2020, the Basic Court issued a decision requesting from the Applicant to specify/supplement the claim in the subjective sense and decided that the opposing party H.K., be summoned to the next hearing.

31. On 6 March 2020, the Applicant filed a complaint with the Basic Court regarding the excessive length of review of his case and requested the exclusion of the supervising judge in his case.
32. On 22 June 2020, the Basic Court summoned the Applicant to appear before the Basic Court and pay the court fee in the amount of 20 Euros, on behalf of the request for exclusion of the judge. The Basic Court also informed the Applicant that in case of failure to pay the court fee the submitted request will be considered to have been withdrawn.
33. On 28 September 2020, the Basic Court by Decision [C.no. 256/2018] decided to exempt the Applicant from the court fee.

Applicant's allegations

34. The Applicant alleges that *“Due to the inactions of the BCM-Branch in Skenderaj , my right of access to Court guaranteed by the Constitution of the Republic of Kosovo and International Conventions has been made impossible. I was deprived of equality before the law (Article 3.2 of the CRK). I have been deprived of the protection of property (Article 46), trial within a reasonable time, and have been treated differently from others - discrimination (Article 24), disrespect for human rights (Article 21.3 of the Constitution).”*
35. The Applicant requests from the Court to *“[...] request from the Constitutional Court to issue a judgment whereby it would find that there are violations of human rights such as: - the right of access to courts, of legal protection of property, right to fair and impartial trial, judicial protection of rights (Article 54) trial within a reasonable time, prohibition of discrimination (treatment differently from others)”*

Assessment of the admissibility of Referral

36. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
37. The Court refers to paragraphs 1 and 7 of Article 113 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”.

38. The Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court first refers to Article 47 [Individual Requests], which establishes:

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.”

(...)”.

39. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates 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.”

40. The Court notes that the Applicant alleges that his case is being prolonged by the Basic Court. In essence, the Applicant alleges a constitutional violation as a result of the inaction and length of the proceedings with respect to the review of his case by the Basic Court.

41. In this connection, the Court refers to Article 31 of the Constitution and Article 6 of the ECHR:

*Article 31.2 [Right to Fair and Impartial Trial]
of the Constitution*

[...]

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 [...].”

Article 6.1 (Right to a fair trial) of the ECHR

“1. Everyone is entitled to a fair and public hearing within a reasonable time...”

42. For verifying the groundedness of the Applicant's allegations with respect to the violations of constitutional rights and freedoms relating to decision-making within a reasonable time, the Court will deal with: i) establishing the duration of the proceedings before the competent institutions as a whole, ii) relevant principles relating to the length of the proceedings, and iii) the reasonableness of the length of the proceedings before the Basic Court.

i) The time period that will be taken into consideration

43. In the present case, the Court notes that in July 2017, the Applicant has filed a claim with the Basic Court for confirmation of the boundary (borderline) of the immovable property as well as confirmation of ownership in relation to the disputable parcels.
44. In this respect, the Court, when determining the time period to be taken into consideration, will consider the initiation of the proceedings, namely July 2017, which is the date when the Applicant filed a claim with the Basic Court as well as 30 June 2020, when the Applicant filed the Referral with the Court.
45. Therefore, the Court notes that the period to be taken into consideration in relation to the Applicant's allegation for a violation of the right to fair trial, pursuant to Article 31.2 of the Constitution in conjunction with Article 6.1 of the ECHR, consists of 4 (four) years 11 (eleven) months and 26 (twenty six) days.

ii) Relevant principles

46. First of all, the Court notes that, according to the consistent case law of the European Court of Human Rights (hereinafter: the ECtHR), the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case, having regard to the criteria laid down in the ECtHR case law, specifically : (a) the complexity of the case; (b) the conduct of the parties to the proceedings; (c) the conduct of the competent court or other public authorities; and (d) the importance of what is at stake for the Applicant in the litigation (see, the ECtHR Judgment of 7 February 2002, *Mikulić v. Croatia*, no. 53176/99, paragraph 38; see also the case of the Constitutional Court KI23/16, Applicant *Qazim Bytyqi and others*, Resolution on Inadmissibility of 5 May 2017, paragraph 58).

iii) The analysis of the reasonableness of the length of the proceedings

47. The Court notes that this case relates to the Applicant's claim for confirmation of the boundary (borderline) of the immovable property and confirmation of ownership as a usurped part.
48. As to the complexity of the case, the Court refers to the case law of the ECtHR that clarified that the complexity of the case may relate to factual and legal issues, but may also be related to the involvement of certain parties to the proceedings or a certain number of evidence that are to be considered by the regular courts (see, *mutatis mutandis*, the ECtHR Judgment of 19 September

1994, *Katte Klitsche de la Grange v. Italy*, no.21/1993/416/495, paragraph 55; ECtHR Judgment of 7 February 2002, *H. v. the United Kingdom*, no. 9580/81, paragraph 72; ECtHR Judgment of 15 October 1999, *Humen v. Poland*, no. 26614/95, paragraph 63.)

49. In this respect, for determining whether the length of the proceedings was reasonable, the Court must take into account factors such as: the complexity of the case, the conduct of the Applicant and the conduct of the relevant judicial authorities. (See, the case *Konig v. Germany*, ECtHR, Application no. 6232/73, Judgment of 28 June 1978, paragraph 99).
50. The complexity of the case may derive, for example, from the number of claims, the number of parties involved in the proceedings, such as defendants and witnesses, or the international extent of the case (See, the case *Neumeister v. Austria*, ECtHR, Application no.1936/63, Judgment of 27 June 1968, paragraph 20).
51. In the present case, the Court notes that the Applicant's case also concerned other parties, as well. Consequently, his case was subject to two sets of proceedings, the procedure for reviewing the inheritance over the disputable property because in the disputable property, in addition to the Applicant, there were also other owners and then the court proceedings for confirmation of the ownership.
52. The Court notes that on 17 May 2018, the Applicant requested from the Basic Court to resume the proceedings suspended by Decision [C.no. 204/2015] of 27 April 2017, on the grounds that the Basic Court by Decision [Tc.no.33/ 18] of 27 April 2018 had already declared the heirs in the disputable property.
53. The Court also notes that the Basic Court had constantly communicated with the Applicant by: (i) informing him of the current status of his case, (ii) requesting from the Applicant to specify the claim and pay the court fee; (iii) deciding that the opposing party be summoned to the hearing and finally (iv) exempting the Applicant from the court fee.
54. The Court notes that the review of Applicant's case in the Basic Court was consistently accompanied by notifying and procedural actions by the Basic Court. On the basis of the case facts, the Court notes that the last procedural action of the Basic Court in the present case was the Decision [C.no.256/ 2018] of 28 September 2020, whereby the Applicant was exempted from the court fee.
55. In these circumstances, the Court finds that the Basic Court has not been passive in the Applicant's case.
56. Article 31 of the Constitution and Article 6.1 of the Convention do not oblige applicants to actively cooperate with the judicial authorities. They can also not be blamed for the full use of legal remedies made available by applicable law. Their conduct, however, constitutes an objective fact which cannot be attributed to the public authorities and which must be taken into

consideration when determining whether or not the proceedings lasted longer than the reasonable time stipulated in Article 6.1 of the Convention (See, the ECtHR case *Eckle v. Germany*, Application no.8130/78, Judgment of 15 July 1982, paragraph 82).

57. Article 31 of the Constitution and Article 6.1 of the Convention oblige the competent authorities to organize the legal systems in such a way that their courts meet all the criteria established in the said Article (See, the ECtHR case *Abdoella v. The Netherlands*, Application no.12728/87, Judgment of 25 November 1992, paragraph 24).
58. Even though the cases may be complex, the Court may, nevertheless, consider as “reasonable” lengthy periods of judicial inactivity. (See, the ECtHR case *Adiletta v. Italy*, Application no.20/1990/211/271-273, Judgment of 24 January 1991, paragraph 17).
59. In fact, the Court notes that the Basic Court was active; it did not remain silent and undertook notifying and procedural actions in the Applicant’s case.
60. The Court wishes to clarify that it is not aware whether the Basic Court has issued or is expected to issue a decision on merits in relation to the Applicant’s submissions.
61. Moreover, the Court notes that the proceedings are still ongoing and that there is no final decision.
62. The Court notes that the regular courts have taken into consideration the constitutional and legal obligation to finalize cases within reasonable time, so as not to cause confusion and uncertainty. Regular courts cannot allow the case to be indefinitely transferred from one court instance to another. Otherwise, the public confidence in the entire legal order would be undermined.
63. Consequently, the Court concludes that the Applicant has not proved the allegation that the course of the proceedings in his case resulted in excessive length and lack of resolution of the case within reasonable time, as guaranteed by Article 31.2 of the Constitution and Article 6.1 of the ECHR.
64. Therefore, the Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39(2) of the Rules of Procedure, on 10 February 2021, unanimously

DECIDES

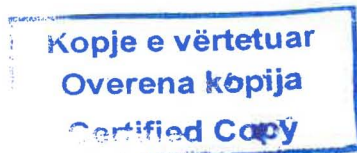
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



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