



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

Prishtina, 27 May 2020
Ref. no.:RK1787/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI63/20

Applicant

Ilir Zymberi

**Constitutional review of Judgment Ac. No. 4336/19
of the Court of Appeals of 6 February 2020**

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 Ilir Zymberi (hereinafter: the Applicant) from the village Molliq, municipality of Gjakova.

Challenged decision

2. The Applicant challenges Judgment Ac. No. 4336/19 of the Court of Appeals of 6 February 2020, as well as Decision PPP. No. 2/19 of the Basic Court of 11 July 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions, whereby, according to the Applicant's allegation, the rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo (hereinafter: Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (u hereinafter: the ECHR) have been violated.

Legal basis

4. 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 Constitutional Court

5. On 10 April 2020, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 May 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.
7. On 4 June 2020, the Court notified the Applicant about the registration of the Referral, by the same notification the Court requested the Applicant to fill in the official referral form, to submit to the Court Decision PPP. No. 2/19 of the Basic Court of 11 July 2019 as well as information related to his request for protection of legality submitted to the Supreme Court. On the same date, the Court forwarded a copy of the Referral to the Court of Appeals.
8. On 17 June 2020, the Applicant submitted to the Court the completed referral form, Notification (KMLC No. 56/20 of 10 June 2020) of the Supreme Court regarding his request for protection of legality, however, the Applicant did not submit Decision PPP. No. 2/19 of the Basic Court of 11 July 2019.
9. On 12 April 2021, the Review Panel considered the report of the Judge Rapporteur, and recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 20 December 2018, the Energy Corporation of Kosovo (hereinafter KEK) filed a proposal against the Applicant for enforcement due to unpaid debts for consumed electrical energy for the period from 5 February 2011 to 20 March 2013. On the same date, the private enforcement agent G.D. allowed enforcement by Order P. No. 1379/18.
11. On 26 December 2018, the Applicant filed an objection against the execution order (P. No. 1379/18) with the Basic Court in Gjakova, stating that the disputed debt became statute-barred.
12. On 11 July 2019, the Basic Court in Gjakova, by Decision [PPP. No. 2/19] rejected as ungrounded the objection of the executive debtor, explaining that the Applicant accepted the debt to KEK by concluding a debt payment agreement (No. 61422) of 12 April 2018 with KEK.
13. On unspecified date against Decision [PPP. No. 2/19] of the Basic Court in Gjakova, the Applicant filed an appeal with the Court of Appeals, on the grounds of *“essential violation of the provisions of contested procedure, erroneous and incomplete determination of factual situation, as well as on the grounds of violation of substantive law”*.
14. On 6 February 2020, the Court of Appeals, by Decision [Ac. No. 4336/19], rejected as ungrounded the Applicant's appeal and upheld the decision of the Basic Court, reasoning that, *“in the present case, the litigating parties entered into a debt payment agreement no. 61422 of 12 April 2018 as well as the Statement on acceptance of debt no. 61422 of 12.04.2018, by which the parties agreed to pay the debt through the reprogramming of the debt of 870.08 euro, with the aim of utilization according to Law no. 05/L-043 on deletion of public debts and deletes the amount of 2,070.90 euro, a contract that the debtor did not fulfill, as he was obliged to pay the accepted debt in 18 installments, he paid only one installment under Article 3 of the contract 61307 of 25.01.2018, where it is emphasized that „in case the user causes 3 consecutive delays in payments according to programming, the agreement is terminated and the paid part of the debt, if any, is deleted, and the remaining part of the debt is returned, including all penalties“, the paid debt is deleted, while the remaining part of the debt was returned to him, and since in addition to the agreement, payments made by the debtor also interrupt the statute of limitations in terms of the above provision, therefore the position and legal conclusion of the first instance court rejecting the debtor's objection is fair and lawful, while the debtor's appealing allegations regarding the statute of limitations of the debt, results as unfounded, which this court rejected as ungrounded and decided to confirm the challenged decision”*.
15. On an unspecified date, the Applicant submitted against the decisions of the Basic and the Court of Appeals a proposal to the State Prosecutor to initiate a request for protection of legality before the Supreme Court.
16. On 10 June 2020, the State Prosecutor by Notification KMLC No. 56/2020, notified the Applicant that *„the proposal was not accepted, because in this*

matter there is not a sufficient legal basis for submitting a request for protection of legality“.

Applicant's allegations

17. The Applicant alleges that the Basic Court and the Court of Appeals violated his rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, without specifying how these violations occurred.
18. The Applicant alleges *„The first instance court rejected the debtor's objections, considering that the reasons stated in the debtor's objection do not participate in the reasons provided in Article 71 of the LEP, which we consider that this court has erroneously decided in such a way, due to the fact that sufficient reasons were given proving that the extract from the business books of the debtor is a completely unilateral act of the creditor, unfounded on law and does not represent an enforceable title“.*
19. The Applicant added that *„As for the contract signed between the parties, namely the creditor and the debtor regarding the reprogramming of the debt, it must be taken into account that it is a contract with bilateral rights and obligations, so in this case the creditor cannot request payment of the debt, referring to that contract if he does not respect it“.*
20. According to the Applicant's allegations, *„If the parties do not respect the contract, in that case the situation remains as it was before its conclusion and it does not create a legal effect and in that case the creditor cannot claim a debt older than until January 2017“.*

Admissibility of the Referral

21. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and the Rules of Procedure.
22. 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“.

23. In addition, the Court also refers to the admissibility requirements as prescribed by 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 establish:

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...”

24. As regards the fulfillment of these requirements, the Court finds that the Applicant is in the capacity of an authorized party, challenging the act of the public authority, namely Decision [Ac. No. 4336/19] of the Court of Appeals of 6 February 2020, after the exhaustion of all available legal remedies provided by Law. The Applicant also clarified the rights and freedoms he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
25. However, the Court also examines whether the Applicant fulfilled the admissibility requirement established in Rule 39 (2) of the Rules of Procedure, which establishes:

“(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”.

26. The Court initially notes that the abovementioned rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.
27. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as *„manifestly ill-founded“* in its entirety or only with respect to any specific claim that a referral may constitute. In this regard, it is

more accurate to refer to the same as „*manifestly ill-founded claims*“. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of „*fourth instance*“; (ii) claims that are categorized as „*clear or apparent absence of a violation*“; (iii) „*unsubstantiated or unsupported*“ claims; and finally, (iv) „*confused or farfetched*“ claims. (See, more precisely, the concept of inadmissibility on the basis of a referral assessed as „*manifestly ill-founded*“, and the specifics of the four above-mentioned categories of claims qualified as „*manifestly ill-founded*“, the Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 255 to 284).

28. In the context of the assessment of the admissibility of the Referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant 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.
29. The Court recalls that the Applicant alleges that the challenged decisions violated Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
30. The Court notes that the Applicant repeats the same arguments he presented in the proceedings before the Basic Court and the Court of Appeals that the regular courts have dealt with this matter, therefore, in the following paragraphs the Court will further elaborate on the proceedings before the regular courts.
31. In the present case, the Court notes that the Applicant's allegations regarding the violation of Articles 31 of the Constitution in conjunction with Article 6 of the ECHR are reduced to erroneous determination of factual situation and erroneous application and interpretation of the law by regular courts, thus raising the issue of erroneous application and interpretation of the legal provisions. The Applicant also requests the Court to *assess the legality of the challenged decisions*, which falls exclusively within the jurisdiction of the regular courts (legality).
32. In this regard, the Court reiterates that the complete determination of factual situation, as well as the interpretation and application of the law, is in the full jurisdiction of the regular courts, and that the role of the Constitutional Court is only to ensure respect for the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a „*fourth instance*“ court (See: in this context, the case of the ECtHR *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used therein, and see also the cases of Court KI128/18, cited above, paragraph 56, and KI62/19, cited above, paragraph 58).
33. Therefore, in these circumstances, and on the basis of the above and taking into account the allegations filed by the Applicant and the facts presented by him, the Court, also based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not sufficiently proved and substantiated his allegation of a violation of the fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article

6 of the ECHR (see in this context, *inter alia*, the cases of the Court KI128/18, Applicant: *Limak Kosovo International Airport J.S.C.*, “Adem Jashari”, Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant: *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56 -57; KI110/19, Applicant: *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).

34. The Court also reiterates that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court to challenge the application of substantive law by the regular courts of a civil dispute, where often one of the parties wins and the other loses (See: in this regard, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68; and cases of the Court KI128/19, cited above paragraph 58; and KI22/19, Applicant: *Sabit Ilazi*, Resolution on Inadmissibility of 07 June 2019, paragraph 42).
35. In this respect, in order to avoid misunderstanding among the applicants, it must be borne in mind that the “fairness” required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not a “substantive” but rather a “procedural” fairness. This translates in practical terms into adversarial proceedings, in which parties are heard and placed on an equal footing before the Court (see, in this context, the case of the Court KI64/20, Applicant *Asllan Meka*, Resolution on Inadmissibility of 03 August 2020, paragraph 41; and KI22/19, cited above paragraph 43).
36. The Court further notes that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the Applicant’s dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself raise an arguable allegation of a violation of the right to fair and impartial trial (see, in this context, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21, and see also the case of the Court KI128/19, cited above, paragraph 59).
37. Finally, the Court emphasizes that the Applicant alleges a violation of the abovementioned Articles without substantiating or reasoning their violation by the challenged decisions.
38. The Court recalls its case law, according to which the mere mentioning of an Article of the Constitution, without clear and adequate justification as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that ensures respect for human rights and freedoms (see, in this regard, cases of the Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility, of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October 2019, paragraph 34)
39. Such a position of the Court is based on the case law of the ECtHR, based on which the unjustified allegations or complaints and unsubstantiated by arguments and evidence, are declared inadmissible as manifestly ill-founded (See Guide to the ECtHR of 30 April 2019 on Admissibility Criteria; part I. Procedural

Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283). Moreover, such allegations, which do not adequately clarify the alleged violations, are also inadmissible based on Article 48 of the Law in conjunction with item d) of paragraph 1 of Rule 39 of the Rules of Procedure, based on which the Applicants have a duty to accurately clarify their allegations and adequately present the facts and allegations of fundamental rights and freedoms, which have allegedly been violated.

40. In the circumstances of the present case, the Court considers that the Applicant has not sufficiently proved and substantiated his allegations of violation of the aforementioned Articles of the Constitution and, consequently, these allegations are to be declared inadmissible as manifestly ill-founded on constitutional basis, as established in paragraph 2 of Rule 39 of the Rules of Procedure.
41. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 12 April 2021, unanimously

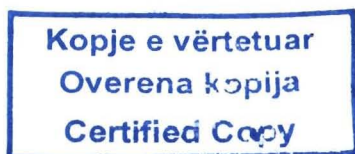
DECIDES

- 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

Safet Hoxha



Arta Rama-Hajrizi

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