



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

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Prishtina, on 13 August 2021  
Ref. No:RK 1832/21

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI168/20**

Applicant

**Pashk Spaqi**

**Constitutional review of Decision Ac.no.5997/2019 of the Court of Appeals of Kosovo, of 8 June 2020**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by Pashk Spaqi from the village of Qerim, Municipality of Gjakova (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Decision Ac.no. 5997/2019 of the Court of Appeals of Kosovo, of 8 June 2020, in conjunction with Decision PPP.no.44/2019 of the Basic Court in Gjakova - General Department – Civil Matters Division (hereinafter: the Basic Court), of 28 August 2018.
3. The challenged decision was served on the Applicant on 15 July 2020.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the decision of the Court of Appeals, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

5. The Referral is based on Article 113.7 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) 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**

6. On 28 October 2020, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 2 November 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gerxhaliu Krasniqi (members).
8. On 30 November 2020, the Court notified the Applicant and the Court of Appeals about the registration of the Referral.
9. On 10 February 2021, the Court sent an additional request to the Basic Court requesting from it to provide evidence when the challenged decision of the Court of Appeals was served on the Applicant.
10. On 24 February 2021, the Court received the evidence on the date of service of the challenged decision of the Court of Appeals.
11. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election

of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the decision of the Court it was determined that Judge Gresa Caka-Nimani shall assume the duty of the President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 25 June 2021.

12. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of a judge at the Constitutional Court.
13. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision KSH 168/20, appointed Judge Remzije Istrefi-Peci as a member of the Review Panel instead of Judge Bekim Sejdiu.
14. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
15. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, issued Decision KSH.KI 168/20, replacing the previous President Arta Rama-Harizi in her role as the presiding judge of the Review Panel with President Gresa Caka Nimani.
16. On 21 July 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the rejection of the Referral.

### **Summary of facts**

17. On the basis of the case file, the Court notes that the essence of the dispute relates to the issue of collection of debt for the consumed potable water in the amount of 3,744.44 Euros, allegedly spent by the Applicant during the period from 1 January 2006 to 1 February 2015.
18. On 18 February 2016, the creditor KRU „Radoniqi“ J.S.C. from Gjakova, submitted a proposal to the private enforcement agent against the Applicant, in which it requested collection of the debt in the amount of 3,744.44 Euros, which resulted as a consequence of the use of potable water, for the time period from 1 January 2006 to 1 February 2015.
19. On the same day, the private enforcement agent, acting upon the creditor's proposal, issued order the P.no.115/16, whereby he allowed the enforcement against the Applicant. In the order P.no. 115/16, it is stated:

*“All debtors' accounts in all Commercial Banks in Kosovo are FROZEN and funds are transferred from the debtor's account to the creditor's*

*account, whenever information is received from the creditor or the enforcement body about the existence of funds in any debtor's account. The debtor's property, both movable and immovable property, as well as immovable objects and the entire property of the debtor in mass are registered, assessed and sold until the obligation of the debtor towards the creditor is fulfilled."*

20. On 10 January 2019, the Applicant filed an objection with the Basic Court against the enforcement order P.no.115/16, stating *"that he is not the user of land, consequently, he also is not the user of water for irrigation of property, since he does not live in the village of Qerim, Municipality of Gjakovë, he lives abroad, and he also pointed out that the claim for payment of the debt has been prescribed..."*.
21. On 28 August 2018, the Basic Court issued the decision PPP.no. 44/2019, wherein it is stated,
  - I. *The debtor's objection, filed against the order of the private enforcement agent ordering the enforcement P. no. 115/16 of 18 February 2016 year, for the debt amounting to 2,582.58 Euros and referring to the time period from 01.01.2006 to 01.01.2013, is PARTIALLY APPROVED, since the statute of limitations has run out.*
  - II. *The remaining part of the order P.no. 115/16 of the private enforcement agent of 18 February 2016, determining the enforcement of the debt in the amount 1,161.86 Euros referring to the time period from 01.02.2013 to 01.02.2016, along with the interest of 8% from the date of expiration of the deadline of the payment until the final payment of the debt as well as the costs of the proceedings is UPHELD.*
22. In the reasoning of the decision PPP.no. 44/2019, the Basic Court has stated:

*„Having analysed the debtor's allegations regarding the prescription of the creditor's claim, the court determined that the same allegations were partially founded because in the specific case we have to do with the debt for the time period from 01.01.2006 to 01.02.2015, for which the enforcement proposal was submitted on 18.02.2016, so as regards the debt referring to the time period from 01.01.2006 to 01.01.2013, amounting to the sum of 2,582.58 Euros, the court has found that it has been prescribed in terms of Article 374 of the LCT of 1987 and Article 355 of the LCT, which provides that: „Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three year period“, in the present case, based on the foregoing there have elapsed more than three years from the day of prescription of the enforcement proposal.*

*While in connection to the time period from 01.02.2013 to 01.02.2015, and the amount of debt of 1,161.86 Euros, the court decided to uphold the order*

*of the private enforcement agent, because for this amount of debt, the debtor's allegations for prescription of the debt are unfounded because there is a creditor's right to realize the debt from the debtor, because the creditor has submitted the enforcement proposal in due time before his right to claim the debt from the debtor has prescribed, which means that he has filed the claim within three years and the claim was considered to have been filed within the time limit. Pursuant to Article 355 of the Law of Contracts and Torts, which stipulates „Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three year period.” Therefore, in this part, the court rejected the debtor's objection as unfounded, because the enforcement proposal has been filed within the legally prescribed time limit.”*

23. The Applicant filed an appeal with the Court of Appeals against the decision PPP.no.44/2019 of the Basic Court, due to “essential violations of the provisions of civil procedure, erroneous and incomplete determination of the factual state and erroneous application of the substantive law in respect of the statute of limitations, as well as the fact that he has no passive legitimacy in the proceedings, since he is not the owner of the property in question...”
24. On 8 June 2020, the Court of Appeals issued the decision Ac.no. 5997/2019, whereby it rejected the Applicant's appeal as unfounded, by stating;

*„The court finds that the debtor's appeal claims regarding the prescription of the debt do not stand because based on the case file we note that it is a claim relating to utility services, irrigation of agricultural land (not potable water), claims that have a periodic nature of claims and prescribe within a 3 year period, as provided for by Article 353 of the Law of Contracts and Torts, hence in this specific case, the court of the first instance has fairly determined that in relation to the amount of debt of 1,161.86 Euros referring to the time period from 01.02.2013 to 01.02.2015 we are not dealing with the expiration of the statute of limitations for this part, the debtor party undertakes to fulfil the obligation to the creditor while as for the second appeal claim of the debtor party that he has no passive legitimacy in the proceedings, as he is not the owner of the immovable property , and that this immovable property stands in the name of the deceased father of the debtor and that he is not the sole heir of the property, it does not stand because of the fact that he did not present any evidence to support his claim regarding passive legitimacy, which consequently remains at the level of allegation, only.*

### **Applicant's allegations**

25. The Applicant alleges that the decisions of the Basic Court and Court of Appeals violate Article 31 of the Constitution in conjunction with Article 6 of the ECHR, for the fact that the private enforcement agent obliged to pay a debt for something that he did not do.

26. More specifically, the Applicant alleges that the decision of the Basic Court and of the Court of Appeals imposed on him the obligation to pay the debt in the amount of 1,161.86 Euros, *“with the justification that for that part of the debt the statute of limitations has not expired. In this case, I lack the passive legitimacy of the party to the proceedings. The immovable property for which is claimed compensation due to the irrigation stands in the name of my deceased father, Pjetër, and I am not the sole heir to the property in question. I am not the owner of the immovable property, I live abroad, and I can provide evidence in this regard, the immovable property is in the name of my now deceased father. I have nothing to do with this debt.”*
27. Therefore, the Applicant requests from the Court to declare his Referral admissible, to find that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and to consequently annul the challenged decisions.

## **Relevant legal provisions**

### **Law of Contracts and Torts of 1987**

#### **“Article 355**

*(1) Should subject of obligation be objects (of property) specified by kind, the obligation shall not come to an end even should all of such objects, possessed by the debtor, be lost due to circumstances for which he is not to blame.*

*(2) However, should the subject of obligation relate to objects specified by kind which have to be taken out of a specific mass of such objects, the obligation shall come to an end should the entire mass be lost.*

#### **Article 374**

*(1) Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three year period.*

*(2) The period of such unenforceability shall run separately for each supply of goods and work or service effected.”*

### **Law No. 04/L-139 on Enforcement Procedure**

#### **Article 69**

*Objection against decision on enforcement*

*[...]*

*4. The basis for the objection must be stated and supported by appropriate evidence. Evidence for objection must be submitted in written otherwise the objection shall be rejected.*



## Assessment of the admissibility of the Referral

28. 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.
29. 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”.*

30. Moreover, the Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court first 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...”*

31. As to the fulfilment of these requirements relating to the court decisions which the Applicant is challenging, the Court finds that the Applicant has submitted the Referral in the capacity of an authorized party, by challenging an act of a public authority, namely the Decision Ac.no. 5997/2019 of the Court of

Appeals, of 8 June 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the rights and freedoms which he alleges to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

32. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, which provides:

*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.*“

33. The Court first notes that the above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Constitutional 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.
34. 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 contain. 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 unjustified*” claims; and finally, (iv) “*confused or far - fetched*” claims. (See, more precisely, on 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 30 August 2019; Part III. Inadmissibility based on the merits; A. Manifestly ill-founded claims, paragraphs 255 to 284).
35. 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 essence 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.
36. Returning to the present case, the Court notes that the essence of allegations for a violation of the Applicant's right to a fair and impartial trial is based upon a single allegation, namely, “*that the Basic Court and the Court of Appeals have obliged him to pay the amount of 1,161, 86 Euros, for the consumed potable water despite the fact that he is not the owner of the land and that consequently he lacks the passive legitimacy of the party to the proceedings.*”



37. With this in mind, the Court, after having considered the court proceedings initiated by the Applicant's complaint allegations before the Basic Court against the enforcement order of the private enforcement agent, noted that the Applicant has based his complaint allegations on two facts, which according to him call into question the fairness procedure, specifically:
- i) *That he lives abroad, and that consequently he is not the user of the land that was irrigated, that he has no legitimacy, and therefore he cannot be the enforcer,*
  - ii) *That the debt claimed by the creditor has reached the prescription.*

***Applicant's allegation in relation to the lack of legitimacy***

38. As regards the Applicant's first allegation concerning the legitimacy, the Court notes that the Basic Court after the hearing session concluded that the enforcement order meets all the criteria for enforcement, and that the Applicant's objection regarding the fact that he could not be an enforcer, is rejected pursuant to the legal provision of Article 69.4 of the LEP, because *"In the present case, the debtor did not act in accordance with Article 69.4 of the LEP, as he is obliged to enclose to his objection material evidence that would prove his claims."*
39. Based on which it can be concluded that the Applicant has had the opportunity to challenge the issue of his legitimacy as a party to the enforcement proceedings before the Basic Court, but did not meet all the criteria stipulated by the relevant legal provision of Article 69.4 of the LCP, namely, according to the conclusion of the Basic Court, *he did not provide material evidence to prove his allegations that he was not the owner of the land.*

***Applicant's allegation in relation to the prescription of debt***

40. As regards the Applicant's second allegation before the Basic Court, which relates to the issue of the *"prescription of the creditor's claim"*, the Court finds that the Basic Court partially accepted this appeal argument, thus ascertaining that a part of the debt calculated for the period for which the claim has reached the prescription is considered prescribed, pursuant to the legal provision of Article 355 of the LCT. Thus, the amount of the enforcement debt as an obligation of the Applicant was drastically reduced, having in mind that the court by decision has calculated the amount only for the time period allowed by law, that is for a period of less than 3 (three) years.
41. Consequently, the Court is of the opinion that the Basic Court has correctly dealt with all allegations of the Applicant by creating no doubt to this Court that the proceedings before the Basic Court have in any way been unfair.
42. Further, the Court also finds that the Applicant has raised exactly the same appeal claims before the Court of Appeals, which concern **i)** the prescription of debt, **ii)** his passive legitimacy as a party to the enforcement proceedings.
43. The Court cannot help but notice that the Court of Appeals has fully responded to them, by pointing out that; **"i)** *as regards the prescription of debt, on the*

*basis of the case file, it is noted that we are dealing with a claim relating to utility services, for irrigation of agricultural land (not potable water), the claims that have a periodic nature of claims and prescribe within a period of 3 years, ii) as regards the second appeal claim of the debtor party that he has no passive legitimacy in the proceedings, since he is not the owner of the immovable property, and that this immovable property stands in the name of the deceased father of the debtor and that he is not the sole heir of the property, this does not stand because of the fact that he did not present any evidence to support his claim regarding passive legitimacy, which consequently remains at the level of allegation, only.”*

44. Bearing in mind all what is stated above, the Court is of the opinion that the regular courts have sufficiently and clearly stated the reasons why the Applicant's appeal claims regarding the enforcement order of the private enforcement agent are rejected as unfounded.
45. The Court emphasizes that it is the obligation of the Applicant to substantiate his constitutional allegations and submit prima facie evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see, the Constitutional Court case No. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylá*, of 5 December 2013).
46. Finally, the Court concludes the Applicant's allegations for a violation of the right to a fair and just trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR due to erroneous determination of factual situation and erroneous interpretation and application of the applicable law on the occasion of the qualification of the act are (i) allegations that qualify as “*fourth degree*” claims; and as such, these allegations of the Applicant are manifestly ill founded on constitutional basis, as defined in paragraph (2) of Rule 39 of the Rules of Procedure.
47. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113.1. and 7. of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 21 July 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

Gresa Caka Nimani



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