



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

Prishtina, on 5 December 2016
Ref. No.:RK1014/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI85/16

Applicant

Esat Haxhiu

**Request for constitutional review of Decision Rev. no. 321/2015 of the
Supreme Court, of 16 November 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Esat Haxhiu from the village Klina e Epërme, Municipality of Skenderaj (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision Rev. no. 321/2015, of the Supreme Court, of 16 November 2015, which was served on him on 10 February 2016, and Decision C. no. 0577/2011, of the Basic Court in Mitrovica - Branch in Skenderaj, and Decision Ac. no. 2026/2014 of the Court of Appeal.

Subject matter

3. The subject matter is the constitutional review of the challenged decision.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 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 2 June 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 July 2016, the President of the Court appointed Deputy President Ivan Ćukalović as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
7. On 19 July 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 16 September 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 29 November 2011, the Applicant filed a claim with the Basic Court in Mitrovica- Branch in Skenderaj, by suing the Government of the Republic of Serbia for material and non-material damage caused to him during the war in Kosovo, asking for compensation for that damage in the amount he had stated in the lawsuit.
10. On 28 April 2014, the Basic Court in Mitrovica - Branch in Skenderaj, by Decision C. no. 0577/2011 rejected the Applicant's claim and declared itself incompetent to decide regarding the claim.
11. The Basic Court in the reasoning of its decision stated that *"If the court during all stages of proceeding determines that the local court is not competent, it*

will be declared incompetent, all the proceedings will be declared invalid and the claim will be dropped.”

12. On an unspecified date, the Applicant filed an appeal with the Court of Appeal.
13. On 5 May 2015, the Court of Appeal by Decision Ac. no. 2026/2014 rejected the Applicant’s appeal and upheld the Decision of the Basic Court.
14. On 2 November 2011, the Applicant filed request for revision with the Supreme Court, on the grounds of essential violations of the contested procedure provisions and erroneous application of the substantive law.
15. On 16 November 2015, the Supreme Court of Kosovo, by Decision Rev. no. 321/2015, rejected as inadmissible the Applicant’s revision with the reasoning that *“the revision may be filed only against a final decision, by which the civil judicial process is completed.”*
16. The Supreme Court further reasoned: *“Therefore, because of the fact that by the challenged decision of the second instance court the civil procedure was not completed based on merits by a final court decision, but because of the procedural reasons – due to the lack of competence of local courts to adjudicate on this legal matter, the claim of the claimant was rejected. The Supreme Court found that the revision of the claimant is inadmissible.”*

Applicant’s allegations

17. The Applicant alleged that the regular courts were competent to decide on the merits of the case, whereas in the Referral addressed to the Court he did not mention a violation of any rights guaranteed by the Constitution, except that he stated that he filed a referral in accordance with Article 113.7, 21, 53, 54 and Article 102 par 7, of the Constitution.

Admissibility of Referral

18. The Court first examines whether admissibility requirements, laid down in the Constitution, and as further specified in the Law and Rules of Procedure, have been met.
19. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

“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.”

20. The Court also takes into account Article 48 of the Law, which provides:

“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.”

21. The Court further refers to Rule 36 of the Rules of Procedure which foresees:
- “(1) *The Court may only deal with Referrals if:*
- (d) *the referral is prima facie justified or not manifestly ill-founded.*
and
- (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
- (a) *the referral is not prima facie justified;*
- (b) *the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution.”*
22. The Court notes that the Applicant has not specifically alleged any constitutional violation but he challenged the final outcome of the court decisions, claiming that the regular courts were competent to decide and that they had to decide regarding his claim.
23. In this regard, the Court reiterates that it is not the role of the Constitutional Court to deal with errors of facts or law (legality), allegedly committed by the Supreme Court, the Court of Appeal or the Basic Court in Mitrovica-Branch in Skenderaj, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).
24. The Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *García Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
25. In fact, the Court reiterates that the task of the Court is to assess whether the relevant proceedings before the regular courts were fair in their entirety, including the way the evidence was taken, or were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, ECtHR Decision on admissibility of application No. 17064/06 of 30 June 2009; *Edwards v. United Kingdom*, paragraph 34, ECtHR Judgment, of 16 December 1992; *Barbera, Messeque and Jabardo v. Spain*, paragraph 68, ECtHR Judgment, of 6 December 1988).
26. The Court notes that the Applicant had numerous opportunities to present his case before the Basic Court in Mitrovica- Branch in Skenderaj, the Court of Appeal and the Supreme Court. He used the appeal remedies, has actively participated in all stages of the proceedings, therefore, the procedure in its entirety cannot be considered as arbitrary or unfair.
27. The fact that both instances of the regular courts concluded that they had no territorial jurisdiction to adjudicate the claim, and the Supreme Court rejected

the revision as inadmissible, indicates that the claim was carefully reviewed and that, the courts reasoned at length why they have rendered such a decision, and also clearly defined the legal basis on which they were based when rendering the decisions which are challenged.

28. In the circumstances of the case, the Court does not find that the decisions of the regular courts were arbitrary or that indicate a violation of any the fundamental rights or freedoms guaranteed by the Constitution, moreover, when even the Applicant himself did not mention in the referral that any of his rights have been violated, but he only listed some of them without giving any reasoning related to human rights and emphasized in some cases “good practice.”
29. In sum, the Court concludes that the Referral is not *prima facie* justified on constitutional basis, and that the Applicant is not a victim of a violation of any constitutional rights, therefore, in accordance with Rule 36 (2) (a) and (c) the Referral is to be declared inadmissible, as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (a) and (c) of the Rules of Procedure, in the session held on 13 September 2016, unanimously

DECIDES

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

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

