



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

Prishtina, on 4 July 2016
Ref. no.:RK961/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI153/15

Applicant

Bekë Sh. Lajçi

**Request for constitutional review of Judgment Rev. no. 219/15, of the
Supreme Court of Kosovo, of 1 September 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Bekë Sh. Lajçi, a lawyer from Peja.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 219/2015, of the Supreme Court, of 1 September 2015, which was served on the Applicant on 12 October 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which according to Applicant's allegations violated the rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 [Right to Fair and Impartial Trial] Article 24 [Equality Before the Law], and Article 46 [Protection of Property] as well as Article 6 of the European Convention of Human Rights (hereinafter: the ECHR).
4. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the imposition of interim measure.

Legal basis

5. Article 113.7 of 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 Procedures).

Proceedings before the Court

6. On 19 December 2015, the Applicant submitted through mail service the Referral to the Court.
7. On 22 January 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 19 February 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 17 May 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 9 October 2012, the Basic Court in Peja rendered Judgment C. No. 1045/2005, which partially approved the statement of claim of the responding party A.D., so that it obliged the respondent (in this case the Applicant) to compensate the claimant an amount of money as determined in the decision, in the name of the compensation of the damage, earned as a result of unfounded enrichment because as a lawyer he had received more money for representations before regular courts than the amount belonging to him according to the tariff of Kosovo Bar Association.

11. The Basic Court based its judgment on the evidence presented by the claimant, on the respondent's statements as well as on the expertise of the judicial expert the lawyer T.B. The Basic Court, *inter alia*, in the judgment stated:

“Based on the administered evidence it results that the respondent represented the claimant in 5 cases before the Municipal Court in Peja, and pursuant to the tariff of the Kosovo Bar Association for these services he was entitled to the amount of 3675, 40 Euros, so he is obliged to return the amount of 7124,60 Euros to the claimant, as groundless enrichment, because it is not in accordance with the tariffs of the Kosovo Bar Association.”
12. On 20 April 2015, the Court of Appeal of Kosovo, by Judgment Ac. no. 4953/2012, rejected the Applicant's appeal as ungrounded and upheld the Judgment of the first instance court.
13. In the reasoning of its Judgment, the Court of Appeal among the others, stated: *“This Court, considering the conclusion and decision of the first instance court has found that it is fair, grounded and is based on the case files and legal provisions, meanwhile the justifiable reasons have been provided which are also approved by this Court”* The Court of Appeal further added that: *“This court assesses the appealed allegations of the respondent as ungrounded, since the first instance court did not commit essential violations of the contested procedure provisions, or erroneous application of the substantive law, of which this court acts ex officio.”*
14. On 19 March 2015, the Applicant filed a request for revision with the Supreme Court because of: 1. Violation of international standards on human rights to fair and impartial trial for the delivering justice, (No. 6 of ECHR) 2. Essential violations of the procedural provisions under Article 118, para. 1 and 2, etc. in conjunction with Article 208 of LCP, and 3. Erroneous application of the provisions of the substantive law (Article 395 of LCP, etc.). Before the Supreme Court the Applicant requested the imposition of interim measure, to prohibit the implementation of forced execution of the final Judgment P. no. 1045/2005 of the Basic Court in Peja.
15. On 1 September 2015, the Supreme Court of Kosovo by Judgment Rev. No. 219/2015 rejected as ungrounded, the Applicant's request for revision filed against Judgment Ac. no. 4953/2012, of the Court of Appeal of Kosovo, of 20 April 2015.
16. Regarding the Applicant's allegations and in particular those of violation of human rights, the Supreme Court reasoned: *“The Supreme Court of Kosovo reviewed the allegations in the revision for violation of international standards on human rights to fair and impartial trial, for delivering the required justice, foreseen by Article 6 of the European Convention on Human Rights and assessed them as ungrounded, since in the revision it is only generally stated that the judgments of lower instance courts contain such violations of this convention, without explaining concretely what are these violations and where are they, therefore, this Court concludes that the*

allegations in the revision regarding such violations of the European Convention on Human Rights are ungrounded.”

17. The Supreme Court also referred to all Applicant’s allegations one by one regarding procedural violations and erroneous application of the law and provided to all adequate and extensive reasoning.

Applicant’s allegations

18. The Applicant alleged that challenged decisions violated his right to fair and impartial trial (Article 31 of the Constitution and Article 6 of the ECHR) because the Judgment of the Supreme Court is not reasoned and according to him, Article 31 of the Constitution and Article 6 of the ECHR, the reasoning of the decisions rendered by the courts is an imperative requirement, and also during the entire court proceedings was not respected the principle of equality of arms in the proceedings.
19. The Applicant further stated that the evidence presented by him in the court was not treated in the same way as the one presented by the claimant and emphasized that the court did not take into account the fact that he and his client had an oral agreement which corresponds to Article 4.2 of the tariff of the Bar Association “*which means the double fee.*”
20. The Applicant also states that he and his colleague, lawyer F. GJ. have taken legal actions on behalf of the Applicant’s children V. D., A. H. D. and A.D., and have taken many other legal and administrative actions, such as photocopying, photography of setting properties, extracting of property documentation, in the name of the Applicant and his descendants which the regular courts have not taken into account as evidence, and which according to the Applicant resulted in a violation of Article 24 of the Constitution [Equality Before the Law].
21. According to the Applicant, there has been a violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol 1 of the ECHR [Protection of Property], because by the court decisions he was arbitrarily deprived of property rights on the amount of money which, according to him, he had acquired lawfully, by denying the legitimate expectation over that “property” which however he enjoyed on the basis of the work performed.

Admissibility of the Referral

22. In order to adjudicate the Applicant’s Referral, the Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution as further specified in the Law and Rules of Procedure.
23. In this respect, the Court refers to Article 113.7 of the Constitution, which stipulates:

“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”.

24. In addition, the Court takes into account Article 48 [Accuracy of the Referral] 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 a public authority is subject to challenge”.

25. The Court also recalls Rule 36 of the Rules of Procedure, which stipulates:

“(1) The Court may consider a referral 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:

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.

26. In assessing the allegations raised by the Applicant, the Court notes that Judgment Rev. no. 219/2015, of 1 September 2015, is challenged.

Relevant constitutional provisions pertinent to the case

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

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 46 [Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public

interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

[...]

Article 6 of ECHR [Right to a fair trial]

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

[...]

27. Assessing the constitutionality of the challenged Judgment in relation to allegations of violations of the Constitution and ECHR, and the facts presented by the Applicant, comparing these facts with the content of the provisions above, the Court finds that these allegations are based on “*the erroneous and incomplete determination of factual situation, erroneous and unequal assessment of evidence, presented by the parties in the proceedings by the regular courts, lack of adequate reasoning in the court decisions. In this regard, the Court will consider each of the allegations raised by the Applicant.*”

Alleged violation of Article 31 of the Constitution – Article 6 of ECHR

28. The Court emphasizes that the right to a fair and impartial trial [Article 31 of the Constitution] is one of the most fundamental rights provided by Chapter II of the Constitution, and it is a precondition for implementation of the principle of rule of law in a democratic society.
29. The Court has constantly reiterated, that according to general rules it is a subject matter jurisdiction and the task of the regular courts to assess the evidence before them (See Case KI47-48/15, constitutional review of Judgment AC-II-14-0057, of the Special Chamber of the Supreme Court of Kosovo, of 12 March 2015, Applicants *Beqir Kosokoviku and Mustafë Lutolli*), and it is also not for the Court to determine whether the certain witnesses are summoned to testify or certain evidence are chosen to be addressed before the regular courts as the Applicant emphasized, or whether the witnesses’ statements were correctly presented as evidence in the case (see, *Kostovski vs. Netherlands*, para. 39, 1989).

30. It is not the jurisdiction of the Court to substitute by its own assessment of the facts the assessment of the regular courts and, as a general rule, it is the duty of this Court to find whether the court proceedings was fair and impartial in its entirety, as it is required by Article 6 of ECHR, namely Article 31 of the Constitution (See among other, *Edwards v. United Kingdom*, 16 December 1992, Series A, no. 247 and *B. Vidal v. Belgium*, 22 April 1992, 33, Series A, no. 235).
31. For the Court, in principle are essential, the issues on which existence depends the assessment of possible violations of the constitutional rights, and not clearly legal issues that were mainly the facts presented by the Applicant (See, *mutatis mutandis*, i.a., *Akdivar vs. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
32. Based on the principle of subsidiarity, the Court cannot act as a fourth instance court by calling into question the final outcome of the court proceedings (See case *FcMetrebi vs. Georgia*, par.31, ECtHR Judgment, of 31 July 2007), and judging by the circumstances of the case, the primary goal of the Applicant was precisely to challenge the outcome of the court proceedings.
33. In relation to the Applicant's allegations, the Court reiterates that the right to a reasoned court decision is one of the core elements of the right to fair and impartial trial, guaranteed by the Constitution and by the ECHR, and the failure of the courts or of other public authorities to reason their decisions to the extent required by the procedural and substantive guarantees of Article 6 of the ECHR, results anyhow in a violation of this right.
34. However, the Court considers that nothing in the case presented by the Applicant proves that the regular courts failed to reason their decisions and that the court proceedings in this case, in entirety, was unfair or arbitrary so that the Constitutional Court can find that the very essence of the right to fair and impartial trial has been violated.
35. Based on above, it was for the regular courts to assess the factual situation and furthermore, the determined factual situation was also supported by the reports of experts of the respective fields. The Court was also not offered any evidence on unequal treatment of the parties in the proceedings that would be indicative of the fact that the Applicant was placed under a procedural disadvantage in relation to his opponent, so that the court proceedings, in its entirety, is substantially degraded (See *Dombo Beheer v. Netherland*, Judgment of 27 October 1993, Series A no. 274) therefore, in these circumstances the Court does not find that the challenged decisions violate Article 31 of the Constitution and Article 6 of the ECHR.
36. In addition, the Court finds that the Supreme Court and the lower instance courts (see paragraphs 10, 11, 15 of the judgment) had fully reasoned the court decisions regarding the Applicant's allegations and particularly those related to the international standards of human rights, explaining correctly why they were not violated, and also justified the allegations of violations of legal provisions raised by the Applicant.

Alleged violation of Article 46 and Article 1 of Protocol 1 of ECHR

37. As regards the Applicant's allegation for violation of Article 46 of the Constitution [Protection of Property], in conjunction with Article 1 of Protocol 1 of the ECHR, the Court finds that the Applicant had erroneous approach to the concept of "property: and the concept of a "legitimate expectation" in relation to the case law of the ECtHR, as well as the current case law of the Constitutional Court when he mentioned the cases from the case law of these institutions that are not applicable in the Applicant's case.
38. In this regard, the Court notes that according to the case law of the ECtHR, there is no "legitimate expectation" in cases when there is a dispute in the interpretation and application of the applicable law, and the regular courts of the domestic system dismiss or reject the submissions of the Applicant as it happened in this case (see case *Jantner vs. Slovakia*, Judgment of ECtHR, of 4 March 2003, ECHR).
39. In the circumstances of this case, there is no room for comparison with the joined cases KI58 /09, 59/09.....13/10 (See Judgment of the Court, the Applicant *Gani Prokshi and 15 other former employees of KEK*), because in that case the Court, referring to the right to property - a legitimate expectation regarding the property, among others, in par. 58, stated: "*The Constitutional Court considers that the Applicants, when signing the Agreements with KEK, had a legitimate expectation that they would be entitled to the monthly indemnity in the amount of 105 Euro until the Pension and Invalidity Insurance Fund was established.*"
40. The Court further reiterated in the reasoning of that judgment that: "*Such a legitimate expectation is guaranteed by Article 1 of Protocol No. 1 to the Convention, its concrete nature and not a mere hope and is based on a legal provision or legal act i.e. Agreement with KEK*" (see also the case *Ibrahimi and the others and mutatis mutandis Gratzinger and Gratzingerova v. the Czech Republic (dec.)*, no. 39794/98, para. 73, ECHR 2002-VII)."
41. The Court, found in the case above without any doubt that between the parties there was a written agreement, binding on the parties, and the monetary amount specified to be paid in monthly amount, while, in the case of the Applicant we do not have such an agreement, and furthermore when the monetary compensation for the services provided was not based on a formalized legal act but according to the Applicant, on a verbal agreement which accuracy was assessed by the regular courts by their court decisions that resulted to be in non-compliance with the Applicant's allegations.
42. In these circumstances, the Court finds that there are no elements of a legitimate expectation for the property and consequently no violation of Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR.

Request for Interim Measure

43. Rule 54 (1) of the Rules of Procedure provides that *“At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.”*
44. The Court further refers to Rule 55 (4) of the Rules of Procedure, which foresees:
- “(a) the party requesting interim measures has shown (...), if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and
(c) the interim measures are in the public interest.
- If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”*
45. However, since the Referral is manifestly ill-founded and, as such, inadmissible, the Court concludes that the request for interim measure cannot be a subject of review and, therefore, it should be rejected.
46. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of a constitutional right, or a right guaranteed by the ECHR, therefore, it cannot be concluded that there has been a violation of human rights by the challenged decision, and in accordance with Rule 36, paragraph 2, items b and d, finds that the Referral is to be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

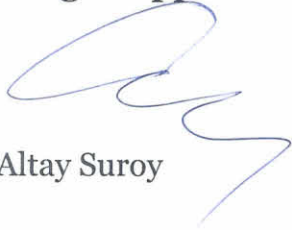
The Constitutional Court, pursuant to Article 47 of the Law, and Rule 36 (2) (b) and (d) of the Rules of Procedure, on 17 May 2016, unanimously

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; and
- IV. This Decision effective immediately;

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

