



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

**Prishtina, on 2 May 2018
Ref. No.: RK 1229/18**

RESOLUTION ON INADMISSIBILITY

in

Case No. KI72/17

Applicant

Ajkune Shala

**Constitutional review of Judgment Rev. No. 15/2017 of the Supreme
Court of 8 March 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Cukalovic, 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 Ajkune Shala from Prishtina (hereinafter, the Applicant) who is represented by Ramiz Suka, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 15/2017 of the Supreme Court of Kosovo, of 8 March 2017, which rejected as ungrounded the Applicant's revision submitted against Judgment AC. No. 2326 / 2013 of the Court of Appeals, of 31 October 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights 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

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure (hereinafter, the Rules of Procedure).

Proceedings before the Court

5. On 20 June 2017, the Applicant submitted the Referral to the Court.
6. On 22 June 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Bekim Sejdiu and Selvete Gërxhaliu- Krasniqi.
7. On 26 July 2017, the Court notified the Applicant about registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 22 February 2018, 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 17 July 2001, the Applicant's husband, while performing his work obligations in a building of his employer (hereinafter, the employer), suffered bodily injuries from which he died.
10. On 16 November 2005, the Municipal Public Prosecutor (hereinafter, the MPP) filed with the then Municipal Court in Pristina the indictment PP. No. 1799-1/2001 against the employer, due to the reasonable suspicion of having committed the criminal offence of causing general danger.
11. On 11 November 2008, the then Municipal Court (Judgment P. No. 2909/03) dismissed the indictment and terminated the criminal procedure against the employer "*due to the absolute prescription of criminal prosecution*".

12. On 6 November 2007, the Applicant filed with the Municipal Court a civil claim, requesting to oblige the employer *“to pay to the claimant for the compensation of the material and non-material damage for their parent, namely the husband”*.
13. On 19 February 2013, the now Basic Court (Judgment C. No. 2418/07) rejected the Applicant's statement of claim, reasoning that, pursuant to Article 358 (2) of the LOR, *“the discontinuance of statute-barring of criminal prosecution shall have as a consequence the discontinuance of statute-barring of the compensation claim”*.
14. The Applicant filed with the Court of Appeals an appeal against that Judgment of the Basic Court, *“due to the substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law”*.
15. On 31 October 2016, the Court of Appeals (Judgment Ac. No. 2326/13) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Basic Court, considering that *“the first instance court has just decided when it completely rejected as ungrounded the statement of claim of the claimants because of the statute of limitations for compensation of damage”*.
16. The Applicant submitted to the Supreme Court a request for revision against that Judgment of the Court of Appeals, *“due to the violation of the provisions of the contested procedure and erroneous application of substantive law”*.
17. On 8 March 2017, the Supreme Court (Judgment Rev. No. 15/2017) rejected as ungrounded the Applicant's revision, reasoning that *“the second instance court correctly applied the substantive law when it rejected the appeal of the claimants as ungrounded and upheld the Judgment of the Court of the first instance [...] while according to the provisions of Article 376 of the LOR, the time limit of prescription is 3 (three) years, namely the time limit of five years from the date when the damage was caused at any case”*.

Applicant's allegations

18. The Applicant claims that the Labor Law in force at the time of her husband's death obliges the employer to compensate for the damage caused at work and in cases where the employee is not guilty of the accident.
19. Furthermore, the Applicant considers that the courts, by rejecting her statement of claim for compensation, violated her rights and freedoms guaranteed by Article 31 of the Constitution and Article 6 of ECHR.
20. The Court notes that the Applicant did not explicitly state the relief she requests from the Court.

Admissibility of Referral

21. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution and further provided by the Law and foreseen by the Rules of Procedure.
 22. In this respect, the Court refers to §§ 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. The Court also refers to Article 49 [Deadlines] of the Law which foresees:

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. In that connection, the Court considers that the Applicant is an authorized party challenging a Judgment of the Supreme Court, has exhausted legal remedies and has filed the Referral in the prescribed deadline.
 25. However, the Court further refers to 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 public authority is subject to challenge.
 26. In addition, the Court takes into account §§ (1) (d) and (2) (b) of Rule 36 [Admissibility Criteria] of the Rules of Procedure which foresee:
 - (1) *The Court may consider a referral if:*
 - (d) *the referral is prima facie justified or not manifestly ill-founded.*
 - (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.*
27. The Court recalls that the Applicant claims a violation of her right to fair and impartial trial, because the regular courts rejected her statement of claim for compensation for her husband's death caused at work.

28. In this regard, the Court preliminarily notes that the regular courts dealt exclusively with procedural matters concerning the deadlines of statutory limitation of the claim for compensation.
29. In fact, the Court observes that the Applicant's statement of claim, the appeals and the revision were rejected, because, as stated by the Supreme Court, *"the courts of lower instances correctly assessed that the husband of the [Applicant], (...) died at work on 17 July 2001, while the claimants submitted a claim at the Court on 6 November 2007, more than 6 (six) years, while according to the provisions of Article 376 of the LOR, the time limit of prescription is 3 (three) years, namely the time limit of five years from the date when the damage was caused at any case"*.
30. In fact, the Court recalls that the Basic Court found that the Applicant's statement of claim could not be admitted because Article 358 (2) of the LOR provides that *"the discontinuance of statute-barring of criminal prosecution shall have as a consequence the discontinuance of statute-barring of the compensation claim"*.
31. The Court also recalls that the Court of Appeals noted that the Applicant's husband *"died on 17 July 2001 while the claimants submitted a claim to the Court on 6 November 2007, which means after more than 6 years"*. The Court of Appeals assessed that *"the request for compensation is prescribed, within the meaning of Article 376 of the LOR, wherein the time limit of three years of prescription has been stipulated"*.
32. The Court considers that the decisions of the regular courts thoroughly explain why the Applicant's statement of claim for compensation for her husband's death could not be admitted.
33. The Court recalls that, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, *"human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.
34. In this respect, the Court reiterates that, similarly as to the ECtHR, it is not the function of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts (matter of legality) unless and in so far as they may have infringed rights and freedoms protected by the Constitution (matter of constitutionality). (See ECtHR case *García Ruiz v. Spain*, No. 30544/96, 21 January 1999, § 28).
35. Thus, the Court emphasizes that the role of the Constitutional Court is solely to ensure the compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, it cannot act as *"fourth instance court"*. (See: ECtHR case *Akdivar v. Turkey*, No. 21893/93, 16 September 1996, § 65; see also Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution of 5 April 2012).

36. The Court considers that the decisions of the regular courts, while acting under their jurisdiction, applied the law in a justified and fair way.
37. Moreover, it was up to the Applicant to present evidence and build arguments showing a constitutional violation of her right to fair and impartial trial. (See Constitutional Court case No. KI19/14 and KI21/14, *Tafil Qorri and Mehdi Syla*, Resolution of 5 December 2013).
38. However, the Court considers that nothing in the case presented by the Applicant indicates that the proceedings before the regular courts were unfair or arbitrary in a way that the Constitutional Court could find that they may have infringed rights and freedoms protected by the Constitution, namely that the core of the right to a fair and impartial trial has been violated or that the Applicant was deprived of any procedural guarantees which would lead to a violation of Article 31 of the Constitution or Article 6 (1) of ECHR.
39. In addition, the Court notes that the Applicant had the benefit of adversarial proceedings, where she was able to submit the arguments she considered relevant to her case. The legal reasons for the regular courts' decisions rejecting as inadmissible her statement of claim were set out at length.
40. Thus, the Court considers that, taken as a whole, the regular courts' proceedings and decisions were justified and fair for the purposes of Article 31 of the Constitution and Article 6 (1) of the Convention.
41. Therefore, the Applicant s' Referral is manifestly ill-founded on constitutional basis and is inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b), and 56 (2) of the Rules of Procedure, on 22 February 2018, unanimously,

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi