



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

Prishtina, on 11 June 2018
Ref. No.: RK 1256/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI156/17

Applicant

Valmir Hajrullahu

**Constitutional review of Decision PML. No. 282/2017 of the Supreme
Court of Kosovo, of 13 October 2017**

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 Valmir Hajrullahu, residing in Ferizaj (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Decision PML. No. 282/2017 of the Supreme Court, of 13 October 2017, which rejected as inadmissible his request for protection of legality against Decision Pn. No. 516/2017 of the Court of Appeals, of 5 July 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated the Applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

4. The Referral is based on paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 [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 26 December 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 27 December 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 15 January 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 16 February 2018, the Court requested the Basic Court in Prishtina the information regarding the date of receipt of Decision Pn. No. 516/2017 of the Court of Appeals of 5 July 2017.
9. On 21 February 2018, the Basic Court in Prishtina informed the Court that the Decision of the Court of Appeals was served on the Applicant on 17 July 2017.
10. On 29 May 2018, the Review Panel considered the report of the Judge Rapporteur and made a unanimous recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 29 March 2016, the Basic Prosecutor in Prishtina Serious Crimes Department filed the indictment PP. No. 624/2016 against the Applicant and

two other defendants, based on a grounded suspicion of having committed a criminal offense.

12. On 19 June 2016, the Applicant requested to the Basic Court the exclusion of evidence and the dismissal of the indictment.
13. On 23 November 2016, the Basic Court [Decision PKR. No. 109/17] rejected as ungrounded the Applicant's request.
14. On 19 June 2017, the Applicant filed with the Court of Appeals an appeal against Decision of the Basic Court, alleging erroneous and incomplete determination of the factual situation and essential violations of the provisions of the criminal procedure.
15. On 5 July 2017, the Court of Appeals [Decision PN. No. 516/17] rejected as ungrounded the appeals of the Applicant and upheld the Decision of the Basic Court.
16. On 17 July 2017, that Decision of the Court of Appeals was served on the Applicant.
17. On 2 October 2017, the Applicant submitted to the Supreme Court a request for protection of legality, alleging that the first instance court only described the statements of witnesses in its decision and the second instance court did not respond to the allegations of the Applicant raised in the appeal.
18. On 13 October 2017, the Supreme Court [Decision PML. No. 282/2017] rejected as inadmissible the Applicant's request for protection of legality, reasoning that, *"pursuant to paragraph 4 of the provisions of Article 432 of this Code, a request for protection of legality may be filed during the criminal proceedings which have not been completed in a final form only against final decisions ordering or extending detention on remand"*.

Applicant's allegations

19. The Applicant claims that the decision of the Supreme Court *"violated Article 31, paragraph 1 and 32 of the Constitution, in conjunction with Article 432, paragraph 1, of the CPCRK"*.
20. The Applicant alleges that he *"was deprived from the right to fair trial in criminal procedure and also deprived from the right to receive a response based on merit regarding the request for protection of legality"*
21. The Applicant also alleges that he was *"deprived from his right within the meaning of the provisions of Article 31, paragraph 1 and Article 32 of the Constitution, in conjunction with Article 432, paragraph 1, of the CPCRK", because "the criminal procedure is passed to the second hearing, in the first and second instance pursuant to the regular legal remedies, while the responses are negative for the defendant, while in the extraordinary legal remedies the request is rejected as inadmissible"*.

Admissibility of Referral

22. The Court examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further provided in the Law and foreseen in the Rules of Procedure.

23. 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.

24. In this regard, the Court considers that the Applicant is an authorized party, and has exhausted all legal remedies.

25. However, the Court also refers to Article 49 [Deadlines] of the Law, which provides:

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 [...].

26. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure, which foresees:

The Court may consider a referral if:

[...]

c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...].”

27. In that respect, the Court examines whether the Applicant has submitted the Referral within the prescribed four (4) month deadline, referring to the date of service of the final decision on the Applicant and the date the Referral was filed with the Court.

28. In that respect, the Court notes that the Supreme Court decided on the request for protection of legality on 13 October 2017; the decision of the Supreme Court was served on the Applicant 20 October 2017 and the Applicant submitted his Referral on 26 December 2017.

29. Moreover, the Court recalls that the four-month period runs from the date of service on the Applicant of the final decision. (See, *mutatis mutandis*, the ECtHR case *Paul and Audrey Edwards v. UK*, Application No. 46477/99, Judgment of 14 March 2002).

30. In that connection, the Court also notes that the Applicant, on 2 October 2017, submitted to the Supreme Court a request for protection of legality against the Decision of the Court of Appeals, dated 5 July 2017.
31. In addition, the Court observes that the Supreme Court rejected the Applicant's request for protection of legality, because *"pursuant to the provisions of Article 432 of the CPC, a request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances (...). While, pursuant to paragraph 4 of the provisions of Article 432 of this Code, during the criminal procedure which was not concluded in final form, the request for protection of legality may only be submitted against final form decisions regarding the imposition or extension of detention"*. The Supreme Court then considered that *"the request for protection of legality was submitted during the criminal procedure which was not concluded in final form"*. Therefore, the Supreme Court found that, *"pursuant to the provisions of Article 435, paragraph 2, of the CPCK, it was rejected as inadmissible"*.
32. The Court considers that the Decision of the Court of Appeals, on rejecting as ungrounded the appeals of the Applicant, completed the proceedings before the regular courts concerning the Applicant's request of dismissal of the indictment.
33. The Court also notes that the Decision of the Court of Appeals was served on the Applicant on 17 July 2017
34. Thus, the Court examines whether the Decision of the Supreme Court constitutes an effective legal remedy, that is, whether the request for protection of legality filed against Decision of the Court of Appeals was a permissible legal remedy.
35. In this respect, the Court considers that the request for protection of legality against the Decision of the Court of Appeals was not an effective legal remedy and that there could be no legitimate expectation to the success of this remedy. In fact, it was explicitly provided by the law that such a legal remedy was not allowed to be filed. (See Constitutional Court cases KI135/16, *Tomislav Janković and Others*, Resolution on Inadmissibility, 27 October 2017, § 25; and KI93/17, *Jeton Jerliu*, Resolution on inadmissibility, 15 February 2018, § 32).
36. The Court refers to §§ 1 and 4 of Article 432 [Grounds for filing a request for protection of legality] of the Criminal Procedure Code, which provide:
 1. *A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:*
[...]

1.2. on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384, paragraph 1, of the present Code; or
[...]

4. Notwithstanding the provisions under paragraph 1 of the present Article, a request for protection of legality may be filed during criminal proceedings which have not been completed in a final form only against final decisions ordering or extending detention on remand.

37. The Court notes that the subject of review before the regular courts was “*the request for the exclusion of evidence and the rejection of the indictment*”, which means that the Court of Appeals was the last effective remedy available under the Law.
38. The Court reiterates that “*only those remedies which are effective, may be taken into account as the Applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue in accordance with the European Convention on Human Rights and Fundamental Freedoms*” (See, *mutatis mutandis*, ECtHR case *Fernie v. the United Kingdom*, Application No. 14881/04, Decision as to Admissibility, of 5 January 2006).
39. In addition, the Court considers that, “*if no remedies are available or if they are judged to be ineffective*”, the 4 (four) month period starts to run from the date of service of the final decision resulting from the exhaustion of legal remedies which are adequate and effective to provide redress in the respect of the matter complained of. (See ECtHR cases *Norkin v. Russia*, Application No. 20156/11, Decision as to Admissibility, of 5 February 2013; and *Bayram and Yildirim v. Turkey*, Application No. 38587/97, Decision of 29 January 2002; see also Constitutional Court case KI201/13, *Sofa Gjonbalaj*, Resolution on Inadmissibility, 2 April 2014, § 32.
40. The Court further recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to be challenged. (See ECHR case *O’Loughlin and Others v. United Kingdom*, Application No. 23274/04, Decision on admissibility of 25 August 2005).
41. In these circumstances, the Court notes that the final decision is the Decision of the Court of Appeals of 5 July 2017, which was served on the Applicant on 17 July 2017. Therefore, the 4 (four) months legal deadline started to run from 17 July 2017. However, the Referral was filed on 26 December 2017, with the deadline for submitting the Referral expiring on 18 December 2017.
42. Thus, the Court considers that, upon the receipt of the Decision of the Court of Appeals on 17 July 2017, nothing prevented the Applicant from filing with the Constitutional Court a request for the constitutional review of the Judgment in question. However, he did not do so and, by using a not permissible legal

remedy, and thus ineffective, he missed on 18 November 2017 the deadline of 4 (four) months to file his Referral with the Court. (See Constitutional Court case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility, 7 December 2017, § 35).

43. Therefore, the Court concludes that the Referral was not filed within the legal time limit established by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
44. In sum, the Court finds that the Applicant's Referral is inadmissible as out of time.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 (7) of the Constitution, Articles 20 and 49 of the Law, and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, in its session held on 29 May 2018, 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. TO DECLARE this Decision effective immediately.


Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi