



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

Prishtina, on 7 November 2018
Ref. no.: RK 1285/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI43/18

Applicant

Nuredin Ferizi

**Constitutional review of Decision Rev. No. 404/2016 of the Supreme
Court of Kosovo of 13 February 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge.

Applicant

1. The Referral was submitted by Nuredin Ferizi (hereinafter: the Applicant), residing in the Municipality of Skenderaj.

Challenged decision

2. The Applicant challenges Decision Rev. No. 404/2016 of the Supreme Court of Kosovo, of 13 February 2017, which was served on him 17 March 2017.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Articles 21.2 [General Principles], 22 [Direct Applicability of International Agreements and Instruments] 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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).
5. On 31 May 2018, in an administrative session the Court adopted the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force fifteen (15) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

6. On 27 March 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 29 March 2018, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
8. On 6 April 2018, the Court notified the Applicant and the Supreme Court about the registration of the Referral. The Court also sent a request to the Basic Court in Mitrovica - Branch in Skenderaj to present proof as to when the Applicant was served with the challenged decision of the Supreme Court.
9. On 2 May 2018, the Basic Court in Mitrovica - Branch in Skenderaj submitted to the Court the acknowledgment of receipt, indicating that the Applicant was served with the challenged decision on 17 March 2017.
10. On 16 June 2018, the mandate of Judges Almiro Rodrigues and Snezhana Botusharova ended. On 26 June 2018, the mandate of Judges Altay Suroy and Ivan Čukalović ended.

11. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
12. On 22 August 2018, the President of the Court rendered a decision replacing Judge Altay Suroy as Judge Rapporteur, with Judge Bekim Sejdiu.
13. On 17 September 2018, the President of the Court appointed a new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).
14. On 10 October 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 15 April 2011, the Applicant filed a claim with the Basic Court in Mitrovica - Branch in Skenderaj (hereinafter: the Basic Court) against the Government of the Republic of Serbia for compensation of material and non-material damage caused to him during the war, namely between 1998 and 1999.
16. On 8 October 2013, the Basic Court by Decision C. No. 0156/2011 dismissed the Applicant's claim and declared itself incompetent to decide on this legal matter.
17. The Applicant filed an appeal against the Decision of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) on the grounds of essential violations of the provisions of the contested procedure, proposing that the Basic Court be declared competent, and approve the claim of the claimant.
18. On 7 July 2015, the Court of Appeals by Decision Ac. No. 1315/2014 rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court.
19. The Applicant filed a request for revision with the Supreme Court against Decision of the Court of Appeals, alleging essential violations of the contested procedure provisions.
20. On 13 February 2017, the Supreme Court by Decision Rev. No. 404/2016, rejected the Applicant's revision as ungrounded. The Supreme Court in its decision, *inter alia*, reasoned that “*Taking into account [the provisions of the Law on Contested Procedure] LCP as well as the fact that the Republic of Serbia - Government of R.S. in Belgrade, [...] in the present case it is about a legal-property dispute in a foreign country, the norms of international law apply on which the domestic court is not competent to decide, [the Supreme Court] considers that the courts of the highest instance has correctly applied the provisions of Article 18.3 and Article 39.1 of the LCP [...]*”.

Applicant's allegations

21. The Applicant alleges that the Decision of the Supreme Court violated his rights guaranteed by Articles 21.2 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.
22. The Applicant alleges that the regular courts *“have erroneously applied the applicable law referred to the territorial jurisdiction of the Basic Court in Mitrovica [...], because the Court that is territorially competent for adjudication of legal matters, is always the court within the territory of which the crime has been committed, moral damage, namely material damage! This definition and valid legal stance is related to the interest of the injured party, the principle of economy in the court and administrative proceedings and is also in accordance with the international principle- per loci”*.
23. The Applicant further states: *“As a result of the abovementioned decisions, [his] request was dismissed, [and] was not given the opportunity that the latter [request] be dealt with in the legal proceedings, according to the applicable law of Kosovo, [...] and the best judicial practices of the region”*.
24. The Applicant, referring to Article 21, paragraph 2 of the Constitution, alleges that the regular courts *“did not apply the advanced international standards on human rights. One of the standards is giving the opportunity to the injured party to initiate the matter of compensation of the moral and material damage caused as a result of the direct actions of the Serbian authorities”*.
25. The Applicant, referring to Article 54 of the Constitution, also states that *“he was denied the right to judicial protection, the right of access to justice at national level and the institutional guarantees for the protection of human rights”*.
26. The Applicant regarding the deadline for submitting his Referral to the Constitutional Court alleges that *“the right for submission of the referral for constitutional review was not used [...] within the given deadline, as the request was received by the Basic Court [...] on 3.4.2017”*.
27. The Applicant further alleges: *“By the Basic Court [...] on 9 February 2018 I was invited to withdraw the case [...]. As the delay was made without my fault, I think that the deadline for submitting a request for constitutional review has now been postponed”*.
28. Finally, the Applicant requests the Court to annul the decisions of the regular courts and *“to request the Basic Court in Mitrovica - branch in Skenderaj to reprocess and adjudicate the legal matter for compensation of moral and material damage in accordance with the applicable law and good court practice [...]”*.

Admissibility of the Referral

29. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, as further specified by the Law and the Rules of Procedure.

30. 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”.

31. In that regard, the Court considers that the Applicant is an authorized party and has exhausted all the legal remedies available to him.

32. 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. [...]”.

33. The Court also takes into account Rule 39 (1) (c) of the Rules of Procedure, which foresees:

The Court may consider a referral if:

[...]

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

34. At the outset, the Court refers to the Applicant's allegations, claiming that he received his case file from the Basic Court on 9 February 2018, and that it was not his fault that he had received the file with delay. In this regard, the Applicant attached the acknowledgment of receipt, but it was not on the name of the Applicant and did not contain the signature of the submitter.

35. The Court, therefore, requested the Basic Court a copy of the acknowledgment of receipt to confirm the date of receipt of Decision Rev. No. 404/2016 of the Supreme Court of 13 February 2017 by the Applicant.

36. The Court notes that the acknowledgment of receipt of the Basic Court signed by the Applicant himself indicates that the Applicant was served with the

challenged decision of the Supreme Court on 17 March 2017. He submitted the Referral to the Constitutional Court on 27 March 2018.

37. The Court takes into account the Applicant's allegation that "*his request will be counted in due time because the delay was made without his fault*". However, the Court notes that the Applicant does not present arguments or evidence that the delay was made without his fault or that the Basic Court requested the withdrawal of the case. As a result, the Applicant did not substantiate this claim.
38. Therefore, the Court finds that the Referral was not submitted within the legal time limit of four (4) months provided for in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.
39. The Court reiterates that the objective of the four-month legal deadline, under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases raising constitutional issues are dealt with within a reasonable time and that past decisions are not continually open to challenge (see: ECtHR Decision as to Admissibility, *O'Loughlin and others v. United Kingdom*, Application No. 23274/04, and see: Constitutional Court Case No. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).
40. The Court notes that it is the duty of the Applicants or of their representatives to act with *due diligence*, in order to ensure that their requests for protection of rights and fundamental freedoms are filed within the legal time limit of four (4) months established by Article 49 of the Law and further specified in Rule 39 (1) (c) of the Rules of Procedure (see ECtHR Decision of 17 September 2014, *Mocanu and Others v. Romania*, Applications No. 10865/09, 45886/07 and 32431/08, paragraphs 263-267).
41. In conclusion, the Court finds that the Applicant's Referral is inadmissible because it is out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, in its session held on 10 October 2018, unanimously

DECIDES

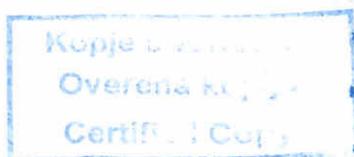
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bekim Sejdiu

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.