



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

Prishtina, on 15 July 2019
No. Ref.:RK 1396/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI35/19

Applicant

Ramiz Hajdini

**Constitutional review of Judgment Rev. No. 207/2018 of the Supreme
Court of the Republic of Kosovo of 7 August 2018**

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 Ramiz Hajdini, residing in Drobes, Municipality of Viti, who is represented by the lawyer Halim Shala (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [Rev. No. 207/2018] of 7 August 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ac. No. 807/2013] of 7 March 2018 of the Court of Appeals and Judgment [C. No. 252/2009] of 31 January 2013 of the Branch in Viti of the Basic Court in Gjilan (hereinafter: the Basic Court).
3. The Applicant was served with the challenged Judgment on 18 September 2018.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on paragraphs 1 and 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).

Proceedings before the Constitutional Court

6. On 28 February 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 4 March 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
8. On 14 March 2019, the Court notified the Applicant's representative about the registration of the Referral, and requested to submit the acknowledgment of receipt that proves when the challenged Judgment of the Supreme Court was served.
9. On 14 March 2019, the Court also notified the Supreme Court about the registration of the Referral. On the same date, the Court sent a request to the Basic Court to present evidence regarding the date when the challenged decision of the Supreme Court was served on the Applicant.
10. On 14 March 2019, the Court notified the interested parties B.S. and Sh.S. about the registration of the Referral.

11. On 27 March 2019, the Applicant's representative submitted to the Court evidence of the receipt of the challenged Judgment.
12. On 27 March 2019, the Basic Court submitted to the Court the acknowledgment of receipt which indicates that the Applicant was served with the challenged Judgment on 18 September 2018.
13. On 4 May 2019, unable to find the interested parties B.S. and Sh.S., the Post of Kosovo returned the envelope to the Court.
14. On 20 June 2019, 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 4 September 2006, the Applicant filed a lawsuit for the payment of the loan, against the respondents B.S. and Sh.S., in the amount of 35,000 (thirty-five thousand) Swiss francs.
16. During the proceedings before the Municipal Court of Viti, the Applicant also filed a request for the dismissal of Judge N.M. On 21 March 2008, by the Decision [C. No. 183/2006], the President of the respective Municipal Court rejected the request for dismissal of the judge as ungrounded.
17. On 26 January 2009, the Municipal Court in Viti, by Judgment [C. No. 183/06], rejected the Applicant's statement claim as ungrounded.
18. On 16 February 2009, the Applicant filed an appeal against the abovementioned Judgment with the District Court in Gjilan, alleging essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
19. On 8 June 2009, the District Court in Gjilan, by Decision [AC. No. 115/09], approved the Applicant's appeal by remanding the case for retrial.
20. On 31 January 2013, the Basic Court, by Judgment [C. No. 252/2009], rejected the Applicant's statement of claim.
21. On 4 March 2013, the Applicant filed an appeal against the Judgment of the Basic Court alleging essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law.
22. On 7 March 2018, the Court of Appeals by Judgment [Ac. No. 807/2013] rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Basic Court.

23. On 23 April 2018, the Applicant filed a revision with the Supreme Court on the grounds of essential violation of the provisions of the contested procedure and erroneous application of substantive law.
24. On 7 August 2018, the Supreme Court by Judgment [Rev. No. 207/2018] rejected the revision as ungrounded.

Applicant's allegations

25. The Applicant alleges that Judgment [Rev. No. 207/2018] of 7 August 2018 of the Supreme Court, which declared as ungrounded his request for revision, was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
26. As to the alleged violations of Article 24 of the Constitution, the Applicant alleges violation of the principle of equality of arms, stating that the courts have rejected his statement of claim, despite the fact that the respondent admitted the respective debt.
27. As to the alleged violation of Article 31 of the Constitution, the Applicant alleges that the court was not impartial, because the Judgment in the Municipal Court was rendered by a judge whose dismissal was requested by the Applicant.
28. As to the alleged violations of Articles 32 and 54 of the Constitution, the Applicant alleges a violation of his right to a legal remedy because his "*requests and submissions*" were rejected during the proceedings before the regular courts.
29. The Applicant also alleges essential violation of the procedural provisions set forth in paragraphs 2.1 and 3.2 of Article 2 and items (d) and (g) of Article 67 of Law no. 03/L-006 of the Contested Procedure.
30. Finally, the Applicant requests the Court that his Referral be declared admissible and Judgment [Rev. No. 207/2018] of 7 August 2018 of the Supreme Court be declared invalid.

Admissibility of the Referral

31. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
32. 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”.

33. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which establish:

Article 47
[Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

Article 48
[Accuracy of the Referral]

“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”.

34. Regarding the fulfillment of these requirements, the Court considers that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [Rev. No. 207/2018] of 7 August 2018 of the Supreme Court, after exhaustion of all legal remedies provided by law. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law.
35. However, the Court should also examine whether the criteria foreseen by Article 49 [Deadlines] of the Law and item (c) of paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure have been met. They stipulate as follows:

Article 49
[Deadlines]

“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... ”.

Rule 39
[Admissibility Criteria]

"(1) The Court may consider a referral as admissible if:

[...]

c) The referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant, and

[...]".

36. In this regard, the Court recalls that the Applicant challenges the Judgment [Rev. no. 207/2018] of 7 August 2018 of the Supreme Court. The evidence submitted by the Applicant's representative and the acknowledgment of receipt submitted to the Court by the Basic Court, confirm that the Applicant was served with the challenged Judgment on 18 September 2018.
37. The Court notes that the Applicant has submitted his Referral to the Court on 28 February 2019. Therefore, the Court finds that the Applicant's Referral was submitted after the legal deadline of 4 (four) months stipulated by the Law and the Rules of Procedure.
38. The Court recalls that the purpose of the 4 (four) months 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 cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to constitutional review. (See, case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECtHR, Decision of 25 August 2005; *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39; see also, among other, cases of the Court KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24 and KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39).
39. In conclusion, based on the foregoing considerations, the Court concludes that the Referral was not filed within the legal deadline established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, consequently, the Court cannot consider the merits of the case, namely, the Applicant's allegations of constitutional violations.
40. Therefore, the Court finds that the Referral is inadmissible, because it was filed out of legal deadline.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 and 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 20 June 2019, unanimously

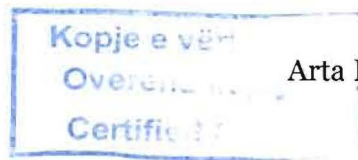
DECIDES

- 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. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani



Arta Rama-Hajrizi

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