



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

Prishtina, 28 October 2019
Ref. no.:RK 1458/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI88/18

Applicant

Hysnije Dedinca

**Constitutional review of Decision Rev. no. 124/2018 of the Supreme
Court, of 12 April 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 Hysnije Dedinca (hereinafter: the Applicant) from the village of sela Vragolije, Municipality of Fushë Kosova, represented by Jeton Osmani, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision No. 12/2018 of the Supreme Court of Kosovo, of 12 April 2018, whereby was rejected, as out of time, the Applicant's request for revision filed against the Judgment Ac.No.547/2008 of the District Court of 18 March 2009.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision of the Supreme Court, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 3. [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter referred to as "the Constitution"), in conjunction with Article 6 (Right to a fair trial) and Article 13 (Right to an effective remedy) of the European Convention for the Protection of Fundamental Human Rights and Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No.03/L-121 (hereinafter: the Law) and Rule 32 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 28 June 2018, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
6. On 16 August 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu(presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 7 September 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 9 November 2018, the Court requested from the Basic Court in Prishtina to attach a copy of the acknowledgment of the receipt of Judgment Ac.No.547 / 2008 of the District Court of 18 March 2009 by the Applicant.
9. On 16 November 2018, the Basic Court submitted to the Court the acknowledgment of service of Judgment of the District Court's on the Applicant, bearing the date of service 5 May 2009.

10. On 8 October 2019, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 14 November 2006, the Applicant submitted a claim to the Municipal Court in Prishtina against the Kosovo Energy Corporation (hereinafter: KEK) regarding the temporary compensation of salary because of termination of employment relationship of her deceased husband.
12. On 16 August 2007, the Municipal Court in Prishtina, by Judgment C1.no. 400/2006 upheld the applicant's claim and obliged the KEK to pay to the Applicant, *"in the name of the temporary salary payment envisaged in the agreement no. 2897 dated 15.08.2001 concluded between the now deceased Hajdin Dedinca (the Applicant's husband) and the respondent, - for the period from 01.09.2006. until 31.07.2007, the amount of € 1,335 - within 15 days from the date of the judgment being rendered, under the threat of forcible execution, and from 01.06.2007 until the conditions stipulated in the aforementioned agreement are fulfilled, it shall pay her the amount of 105€ each month"*.
13. On 22 October 2007, the KEK filed an appeal with the District Court against the judgment of the Municipal Court in Prishtina *"because of essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law"*.
14. On 18 March 2009, the District Court by Decision No. 597/2008 approved, as grounded, the appeal of KEK and accordingly reversed the judgment C. no. 400/2006 of the Municipal Court in Prishtina, dated 16.08.2007. by *"dismissing as unfounded the claim of the Applicant Hysniye Dedinca from the village of Vragoliye, Municipality of Fushë Kosovë, regarding the respondent's obligation for temporary compensation of salary under the Agreement [...]"*.
15. Based on the enclosed copy of the proof of service of Judgment Ac. no. 597 / 2008 of the District Court it results that the Judgment of the District Court was served on the Applicant on 5 May 2009.
16. On 12 March 2018, the Applicant filed with the Supreme Court a request for revizion against the judgment of the District Court, because of the " erroneous application of substantive law and, as a result of erroneous application of substantive law, it rendered an unlawful judgment".
17. On 12 April 2018, the Supreme Court, by Decision Rev. No.124/2018, rejected the Applicant's revision as out of time/belated. In its reasoning, the Supreme Court states: "The Supreme Court of Kosovo finds that the Applicant has submitted the revision to the court after the 30 (thirty) day deadline set by the provision of Article 211.1 of the LCP, since as it appears from the acknowledgment of the receipt in the case file, it results that the Applicant has received the judgment of the second instance court on 4.05.2009, whilst the

deadline for submission of the revision started to run immediately from the next day, that is 5 May 2009, and the last day for submitting the revision was 4.06.2009. (Friday). The Claimant submitted the revision after 8 years and 3 months, which means after the deadline specified in Article 211.1. of the LCP.”

Applicant's allegations

18. The Applicant claims that the challenged decision of the Supreme Court violated the right to equality before the law, the right to a fair and impartial trial and the right to an effective remedy, rights which are guaranteed by the Constitution and the ECHR.
19. The applicant further states that, *“the finding of Supreme Court that the Revision was filed out of time is unfounded and inadmissible and, consequently, unlawful, even contrary to Article 6 of the European Convention. This is because the failure to submit the Judgment Ac. Nr. 597/2008, of 18 March 2009 in the form as provided for by law results in the Applicant beng not treated properly and equally in this procedure”*.
20. In essence, the Applicant supports the alleged violations by stating that the regular courts, *“did not act in accordance with the legal provisions governing the personal filing of documents, more specifically in accordance with the provisions of the Law on Contested Procedure (...)”*, based on the Applicant's claim, failure to deliver the District Court's judgment in accordance with the legal provisions resulted in her revision being declared as out of time , and consequently, she was prevented from receiving a final response from the courts regarding her case and thus she was violated her rights guaranteed by the Constitution and the ECHR”.
21. The Applicant requests from the Court:

“I. TO DECLARE the Referral admissible;

II. TO ESTABLISH that there were violations of rights guaranteed by the Constitution of the Republic of Kosovo, Article 3 [Equality before the Law], 31. [Right to Fair and Impartial Trial], in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights, Article 32 [Right to Legal Remedies], of the Constitution of the Republic of Kosovo, Article 54 [Judicial Protection of Rights] in conjunction with Article 13 (Right to an effective remedy) of the ECHR, and Article 102 (5) [General Principles of the Judicial System] Of the Constitution.

III. TO ESTABLISH that Applicant's Revision dated 12.03.2018, submitted against the Judgment Ac. no. 597/2008 of the District Court of Prishtina , of 18 March 2009; was submitted within the deadline;

IV. TO DECLARE invalid the Decision Rev. No. 124/2018 of the Supreme Court of Kosovo, of 12 April 2018;

V. TO REMAND the Decision Rev. No. 124/2018 to the Supreme Court of Kosovo, of 12 April 2018 for reconsideration.”

Admissibility of the Referral

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and 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 addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accuracy of the Referral] and 49. [Deadlines], which provide:

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”.

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...”

25. As to the fulfillment of the above requirements, the Court finds that the Applicant is an authorized party; she has exhausted the legal remedies at her

disposal; she has specified the act of the public authority which she is challenging before the Court as well as she has filed the Referral in a timely manner.

26. In addition, the Court refers to Rule 39 (2) of the [Admissibility Criteria] of the Rules of Procedure, which provides that:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”

27. The Court notes, first of all, that the Applicant alleges the violation of a number of articles of the Constitution, but justifies only the violation of Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 6 of the ECHR, which according to the Applicant's allegations were violated for two reasons, namely: **a)** the Supreme Court's finding stating that the Revision was filed out of time is unfounded and consequently inadmissible and, therefore results to be unlawful; **b)** the regular courts failed to act in accordance with the legal provisions governing the issue of personal delivery of documents, more specifically in accordance with the provisions of the Law on Contested Procedure
28. Further, the Applicant does not justify the violation of the other Articles of the Constitution, but relates them to Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies], of the Constitution and Article 6 of the ECHR and claims that Articles 3 , 54, and 102, of the Constitution and 13 of the ECHR, were violated in connection with the right to fair and impartial trial.

a) Alleged violations of Articles 31 and 32 of the Constitution and Article 6 of the ECHR in relation to the Supreme Court's finding that the Revision was filed out of time

29. With regard to these allegations by the Applicant, the Court notes that on the basis of the attached copy of proof of receipt of the Judgment Ac. no. 597/2008 of the District Court it results that the judgment of the District Court was served on the Applicant on 5 May 2009.
30. The Court also notes that on 12 March 2018, the Applicant submitted a request for revision to the Supreme Court against the judgment of the District Court.
31. The Court recalls that the Supreme Court rejected the Applicant's request for revision for simply procedural grounds because it was filed outside the time-limit, noting that it had not been filed as prescribed by the relevant articles of the LCP, and accordingly the Supreme Court did not specifically address the very essence of the Applicant's request.
32. In this respect, the Court notes that the Supreme Court has explained in detail to the Applicant that she was legally required to file the revision within the legal time-limit of thirty (30) days. The Court notes that according to the LCP

the Applicant has had the opportunity to present the justification for missing the time-limit for submitting the request for the repetition of the procedure.

33. In this regard, the Court concludes that the Applicant did not provide the Court with evidence „*that the Applicant was not treated properly and equally in the present procedure*“ and, accordingly, the Court considers that her allegations in this respect are manifestly ill-founded in accordance with Rule 39 (2) of the Rules of Procedure.

b) Alleged violations of Articles 31 and 32 of the Constitution and Article 6 of the ECHR in relation to the legal provisions governing the personal delivery of documents

34. With regard to this Applicant's allegation, the Court notes that the Applicant essentially challenges the application of the law in force by the regular courts and the manner in which the judgment of the District Court was served.
35. The Court reiterates that the Basic Court has provided to the Court the proof of service of the judgment of District Court's on the applicant, which bears the delivery date of 5 May 2009.
36. In this regard, the Court recalls the challenged decision of the Supreme Court, which emphasizes:

“The Claimant filed the revision after 8 years and 3 months, which means after the deadline set by the provision of Article 211.1. of the LCP.”

37. In this respect, the Court emphasizes that it is not the duty of the Constitutional Court to address errors of fact or law (legality), which are alleged to have been committed by regular courts, unless and insofar that they may have violated the rights and freedoms protected by the Constitution (constitutionality). The Constitutional Court may not assess the law which has led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of “fourth instance”, which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see: the EctHR case *Perlala v. Greece*, No. 17721/04, of 22 May 2007, paragraph 25).
38. In these circumstances, the Court considers that the reasoning provided by the Supreme Court when deciding on the Applicant's claims was clear, comprehensive and coherent and that the proceedings before the regular courts were not unfair or arbitrary (see: the ECtHR judgment of 30 June 2009, *Shub v. Lithuania*, No. 17064/06).
39. Therefore, the Court concludes that the Applicant did not substantiate her allegations that the relevant procedures were in any way unlawful or arbitrary and that the challenged decisions violated the rights and freedoms guaranteed by the Constitution and the ECHR.

40. The Court further notes that the Applicant does not agree with the outcome of the proceedings before the ordinary courts. However, the applicant's dissatisfaction with the outcome of the proceedings of the regular courts cannot raise by itself serve an allegation of a violation of the right to a fair and impartial trial (see: *mutatis mutandis*, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Application No. 5503 / 02, Judgment of 26 July 2005, paragraph 21).
41. On the basis of the foregoing reasons, the Court concludes that the facts presented by the Applicant in any way justify her claims of a violation of the rights guaranteed by the Constitution.
42. Therefore, pursuant to Rule 39 (2) of the Rules of Procedure, the Applicant's Referral is manifestly ill-founded on constitutional grounds and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 and 7 of the Constitution, and Rule 39(2) of the Rules of Procedure, in its session held on 8 October 2019 unanimously

DECIDES

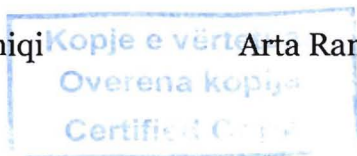
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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