



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

Prishtina, on 29 January 2018
Ref. No.: RK 1188/18

RESOLUTION ON INADMISSIBILITY

Case No. KI93/17

Applicant

Jeton Jerliu

**Constitutional Review of the
Judgment Rev. No. 207/2016 of the Supreme Court,
of 4 October 2016**

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 Jeton Jerliu from Gjilan (hereinafter, the Applicant), who is represented by Elmi Qerimi, a lawyer from Gjilan.

Challenged Decision

2. The Applicant challenges the Judgment Rev. No. 207/2016 of the Supreme Court, of 4 October 2016, which rejected as ungrounded the Applicant's request for revision against the Judgment of the Court of Appeals Ac. No. 1814/2013, of 22 April 2016, in connection with the State Prosecutor Notification KMLC No. 02/2017 of 10 January 2017.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights as guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), in conjunction with Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, the ECHR) and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

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 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 14 August 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 15 August 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Bekim Sejdiu (Presiding), Selvete Gërxhaliu and Gresa Caka Nimani.
7. On 17 August 2017, the Court informed the Applicant of the Registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 6 December 2017, the 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 6 November 2007, the Applicant signed a contract for life long maintenance (hereinafter, the Contract) with his grandfather. The contract stipulated that, after the death of his grandfather and his wife, their property rights would be transferred to the Applicant.

10. On an unspecified date, the grandfather's Applicant requested to the Municipal Court in Gjilan the annulment of the Contract.
11. In between 15 July 2008 and 22 April 2016, the civil proceedings went through different stages until arriving at the Court of Appeals.
12. On 22 April 2016, the Court of Appeals (Judgment, Ac. No. 1814/13) annulled the Contract. On an unspecified date, the Applicant filed a request for revision against that Judgment.
13. On 4 October 2016, the Supreme Court (Judgment Rev. No. 207/2016) rejected as ungrounded the Applicants' request for revision.
14. On 6 January 2017, the Applicant proposed to the State Prosecutor to file a request for protection of legality against the Judgment of the Supreme Court on revision.
15. On 10 January 2017, the State Prosecutor (Notification KMLC No. 02/2017) notified the Applicant that his proposal to request for protection of legality against the Judgment Rev. No. 207/2016 of the Supreme Court of 4 October 2016 was not accepted, because pursuant to Article 245 (3) of the Law on Contested Procedure, *"the request for protection of legality is not allowed against the decision that was taken during revision (...)".*
16. The Applicant states that the Notification of the State Prosecutor was served on him on 13 April 2017.

Applicant's allegations

17. The Applicant claims that the challenged Judgment violated his rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments] and 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 [Right to a Fair Trial] of the ECHR and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.
18. The Applicant alleges that *"according to [Article 190. 3] of the Contested Procedure, the court of the second instance must have determined a direct examination for the case".*
19. The Applicant further alleges that *"the Judgment of the first instance court has been annulled 3 times, which makes us aware that for this particular case it has not been a fair trial [...]".*
20. The Applicant requests the Court that *"these aforementioned Judgments [Judgment Ac. No. 1814/2013 of the Court of Appeals of 22 April 2016 and Judgment Rev. No. 207/2016 of the Supreme Court, of 4 October 2016] be annulled".*

Admissibility of the Referral

21. The Court examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
22. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

*1. The Constitutional Court decides only on matters referred to the Court on a legal manner by authorized parties.
[...]*

7. Individuals are authorized to refer violations of public authorities of their individual rights and freedoms guaranteed by Constitution, but only after the exhaustion of all legal remedies provided by law.

23. In that connection, the Court considers that the Applicant is an authorized party and has exhausted all the legal remedies available to him.
24. 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. [...].

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

26. At the outset, the Court refers to the date of service of the final decision on the Applicant and the date the Referral was submitted in order to assess whether the Applicant has submitted the Referral within the prescribed four (4) month deadline.
27. In that respect, the Court notes that the Supreme Court decided on the revision on 4 October 2016; the Applicant submitted his Referral on 14 August 2017. The Applicant does not indicate the date of service on him of the decision on revision. However the Court notes that, on 6 January 2017, the Applicant submitted to the State Prosecutor a proposal to request for protection of legality. Therefore, the Court concludes that, on or before 6 January 2017, the Applicant could have received from the Supreme Court a copy of the challenged decision on revision.

28. The Court recalls that the four-month period runs from the date of service on the Applicant of that final decision. See, *mutatis mutandis*, the ECtHR case *Paul and Audrey Edwards v. UK*, Application No. 46477/99, Judgment of 14 March 2002.
29. In this respect, the Court recalls that the proposal to the State Prosecutor to request protection of legality was not accepted pursuant to Article 245 (3) of the Law on Contested Procedure, which provides that “*the request for protection of legality is not allowed against the decision that was taken during revision (...)*”.
30. In fact, the Court observes that the State Prosecutor informed the Applicant that “*the Office of Chief State Prosecutor cannot submit request for protection of legality because based on Article 245.3 of Law on Contentious Procedure, Request for protection of legality shall not be allowed against a decision taken by a competent Court when received the revision or request for protection of legality to decide on this legal remedy, which in the concrete case is the Supreme Court of Kosovo*”.
31. In that connection, the Court notes that the Judgment Rev. No. 207/2016 of the Supreme Court of 4 October 2016 on revision completed the proceedings before the regular courts concerning the merits of the Applicant’s case.
32. The Court considers that, in these circumstances, the request for protection of legality against the Judgment Rev. No. 207/2016 of the Supreme Court of 4 October 2016 was not an effective legal remedy and that there could be no legitimate expectation to the success of that remedy. In fact, it was explicitly provided by the law that such legal remedy was not allowed to be filed. See Constitutional Court Case KI135/16, Applicant *Tomislav Janković and others*, Resolution on Inadmissibility of 27 October 2017, § 25.
33. The Court reiterates that “*only remedies which are normal and effective to be taken into account as an 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 under the Convention*”. See, *mutatis mutandis*, the European Court on Human Rights (hereinafter, the ECtHR) case *Fernie v. the United Kingdom*, Application No. 14881/04, Decision as to Admissibility, of 5 January 2006.
34. The Court recalls that, upon service of the Judgment Rev. No. 207/2016 of the Supreme Court of 4 October 2016 on the Applicant, nothing has prevented him from addressing the Constitutional Court. However, he has used a legal remedy which is not allowed by law.
35. In addition, the Court considers that the four-month period starts to run from the date of service of the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in the respect of the matter being complained. See ECtHR case *Norkin v. Russia*, Application No 20156/11, Decision as to Admissibility, of 5 February 2013; see also the Constitutional Court case KI201/13, Applicant *Sofa Gjonbalaj*, Resolution on Inadmissibility of 2 April 2014, § 32.

36. The Court recalls that, “*if no remedies are available or if they are judged to be ineffective*”, the four-month’ time-limit foreseen in Article 49 of the Law in principle runs from the date of service of the act complained of. See ECtHR case *Bayram and Yildirim v. Turkey*, Application No. 38587/97, Decision of 29 January 2002.
37. The Court further recalls that the objective of the four month 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 the cases raising issues under the Constitution are dealt within a reasonable time and that the past decisions are not continually open to challenge. See ECtHR case *O’Loughlin and others v. United Kingdom*, Application No. 23274/04, Decision as to Admissibility, of 25 August 2005).
38. Based on the foregoing, the Court considers that the final decision in the Applicant’s Referral is the Judgment Rev. no. 207/2016 of the Supreme Court, of 4 October 2016. Thus the time-limit begins to run at least on 6 January 2017, which is the minimal date of service of the aforementioned final decision. The Applicant submitted his Referral on 14 August 2017. The four month period to file the Referral expired on 6 May 2017.
39. Therefore, the Court finds that the Referral was not submitted within the legal time limit provided in Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
40. In conclusion, the Court finds that the Applicant's referral is inadmissible because it is out of time.


FOR THESE REASONS

In accordance with Article 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 6 December 2017, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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