



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 10 April 2018
Ref. No.: RK 1207/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI145/17

Applicant

Sh.A. “Elektromotori”

**Constitutional review of Judgment E. Rev. No. 40/2016 of the Supreme
Court of Kosovo, of 5 January 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
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Sh.A. “Elektromotori” company with seat in Gjakova (hereinafter: the Applicant), which is represented by Idriz Daci, a lawyer from Gjakova.

Challenged decision

2. The Applicant challenges Judgment E. Rev. No. 40/2016, of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 5 January 2017.
3. The Applicant states that it was served with the challenged decision on 14 February 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Articles 46 [Protection of Property], 58 [Responsibilities of the State] and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Articles 21.4 and 113.7 of the Constitution and Articles 22 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 8 December 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 15 December 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.
8. On 19 December 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 22 December 2017, the Applicant submitted additional documents to the Court.
10. On 22 February 2018, 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

11. On 6 April 2011, the Applicant filed a claim with the Commercial District Court in Prishtina against the Ministry of Trade and Industry of the Republic of Kosovo (hereinafter: MTI), seeking compensation for material damage and lost profit as a result of the non-registration of business by MTI from 2003 to 2008.

12. On 20 May 2013, the Basic Court in Prishtina - Department for Commercial Matters (hereinafter: the Basic Court) rendered Judgment C. No. 80/2011, which rejected the Applicant's claim against MTI as ungrounded.
13. The Applicant filed an appeal against the Judgment (C. No. 80/2011), of the Basic Court alleging erroneous and incomplete determination of the factual situation, essential violation of the provisions of the contested procedure and erroneous application of the substantive law.
14. On 14 December 2015, the Court of Appeals rendered Judgment Ae. No. 123/2013, which rejected the Applicant's appeal as ungrounded.
15. Against the Judgment (Ae. No. 123/2013) of the Court of Appeals, the Applicant submitted a revision to the Supreme Court, alleging the existence of *"essential violations of the provisions of the contested procedure, erroneous application of substantive law and due to exceeding the statement of claim"*.
16. On 5 January 2017, the Supreme Court, by Judgment E. Rev. No. 40/2016, rejected the Applicant's revision as ungrounded.

Applicant's allegations

17. The Applicant alleges that the Supreme Court (Judgment E. Rev. No. 40/2016) violated his rights guaranteed by Articles 46 [Protection of Property], 58 [Responsibilities of the State], and 119 [Economic Relations - General Principles] of the Constitution.
18. The Applicant states that the MTI from 2003 to 2008 *"denied him the application for registering the business in a regular legal procedure"*, while the regular courts failed to protect his legal rights. As a result, the Applicant alleges that *"his work was terminated and thus the possibility of income generation"*.
19. The Applicant requests the Court to declare the Referral admissible and to declare invalid: Judgment E. Rev. No. 40/2016 of the Supreme Court, Judgment Ae. No. 123/2013 of the Court of Appeals, and Judgment C. No. 80/2017 of the Basic Court.

Admissibility of Referral

20. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
21. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

"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."

22. The Court also refers to paragraph 4, Article 21 [General Principles] of the Constitution, which establishes:

"4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

23. In addition, the Court refers to Article 47 [Individual Requests] of the Law, which stipulates that:

"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."

24. In the present case, the Court notes that the Referral was submitted by the Applicant in accordance with the requirements of Article 113, paragraphs 1 and 7 of the Constitution, which means that the Applicant has fulfilled the requirement to be recognized as an authorized party and it exhausted the legal remedies established by law.

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

"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 further takes into account Rule 36 [Admissibility Criteria], paragraph (1) (b) and (c) of the Rules of Procedure which foresees:

*"(1) 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 [...]."

27. The Court notes that the Applicant challenges Judgment E. Rev. No. 40/2016 of the Supreme Court of 5 January 2017 which allegedly was served on the Applicant on 14 February 2017.

28. The Court further notes that the Applicant submitted the Referral to the Court on 8 December 2017.

29. Consequently, the Court finds that the Applicant's Referral was submitted after the legal deadline of 4 (four) months.
30. The Court 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 constitutional review (See: case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also: Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).
31. Therefore, the Applicant's Referral was submitted after the deadline set forth in Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 22 February 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



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi