



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 6 June 2018
Ref. No.: RK 1244/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI03/18

Applicant

Aziz Morina

**Constitutional Review of Decision, Rev.no.150/2017
of the Supreme Court of Kosovo, of 29 June 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 and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Aziz Morina residing in Prizren (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision, Rev.no.150/2017 of the Supreme Court of Kosovo, of 29 June 2017. The challenged decision was served on the Applicant on 16 August 2017.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision which has allegedly violated the Applicant's right as guaranteed by Article 24 [Equality before the law] and Article 31 [Right to Fair and Impartial Trial] 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 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 December 2017, the Applicant submitted his Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 9 January 2018, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama Hajrizi and Gresa Caka Nimani.
7. On 16 January 2018, the Court notified the Applicant of the registration of the Referral and requested him to submit the completed referral form and additional documents to the Court. A copy of the referral was sent also to the Supreme Court of Kosovo (hereinafter: the Supreme Court).
8. On 1 February 2018, the Applicant submitted the completed referral form and the relevant documents.
9. On 23 May 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

10. The Applicant was an employee of the Ministry of Justice of the Republic of Kosovo (hereinafter: the Employer).
11. On 5 September 2007, the Disciplinary Commission of the Employer by Decision No. 130 decided to terminate the employment relationship with the Applicant. The Employer's decision to terminate the employment relationship

was based on a finding that the Applicant had committed a serious violation of disciplinary rules, namely unauthorized absence in the working place and failure to file a request for sick leave.

12. The Applicant pursued administrative remedies before the Commission on Complaints of the Employer, and appealed to the Independent Oversight Board of Kosovo (IOBK) against the decision to terminate his employment relationship and requested payment of unpaid salaries. These proceedings were unsuccessful, and the Applicant filed an administrative conflict to the Supreme Court.
13. By decision A.nr.984/2008 of 20 August 2008, the Supreme Court in administrative jurisdiction declared itself incompetent. The Supreme Court declared that the Municipal Court in Prishtina was the competent court.
14. Subsequently, the Applicant filed a claim in contested proceedings with the Municipal Court in Prishtina requesting the court to oblige the Employer to compensate him with full salaries for illness at the workplace plus a compensation with half salaries for an additional time period.
15. On 17 October 2012, by Judgment C1.no.331/2008, the Municipal Court in Pristina rejected the Applicant's claim as ungrounded. In its Judgment, the Municipal Court reasoned, *inter alia*, that:

“the request of the claimant [...] is ungrounded because based on the Administrative Instruction no. 2003/10 [...] the paid leave due to the illness at the workplace is approved by Employment Authority, after conduct of the procedures foreseen for accidents and illness at workplace [...] the claimant did not report the accident – illness at the working place [...] he unilaterally without prior approval by the employment authority took sick leave.”
16. On 11 December 2012, the Applicant filed an appeal against the Judgment of the Municipal Court in Prishtina.
17. On 30 July 2013, by Decision C1.No.331/2008, the Basic Court in Pristina (hereinafter: the Basic Court) dismissed the Applicant's appeal, because the Applicant failed to pay the required court fee.
18. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court C1.no.331/2008, dated 30 July 2013, *inter alia* alleging that, as an unemployed person, he is exempt from paying the court fee.
19. On 4 December 2015, by Decision AC.nr. 2777/13, the Court of Appeals rejected the Applicant's appeal as ungrounded and upheld the decision of the Basic Court.
20. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against the Decision of the Court of Appeals.

21. On 27 June 2017, by Decision Rev.no.150/2017 the Supreme Court dismissed the Applicant's request for revision as impermissible.
22. Referring to the provisions of the Law on Contested Procedure (hereinafter: the LCP), based on its calculation of the value of the Applicant's claim in contested proceedings, the Supreme Court found that the revision in this legal matter is not permissible, because the value of the subject of dispute is below the threshold value required for Revision as set forth in the provisions of the abovementioned Law.

Applicant's allegations

23. In his Referral, the Applicant claims that: *"[...] my right to a free and impartial trial guaranteed by the Constitution of the Republic of Kosovo and International Conventions that are directly applicable in the Constitution of the Republic of Kosovo has been violated."*
24. The Applicant further alleges that he is discriminated against because he was unemployed and he believed that he was not required to pay any court fee.
25. Finally, the Applicant requests the Court to declare the court's decisions *"[...] null and void and that the Court in accordance with the Constitution and the laws in force reviews my claim in a meritorious manner and decide as per the law and not as it has done when it dismissed my appeal without having it reviewed at all, because I was not able to pay the fee."*

Admissibility of the Referral

26. The Court first examines whether the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure have been fulfilled.
27. 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."

28. In that connection, the Court considers that the Applicant is an authorized party and has exhausted all the legal remedies available to him.
29. 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. [...].

30. 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 [...].”

31. At the outset, the Court refers to the date of service on the Applicant of the final decision, and the date the Referral was submitted to the Court, in order to assess whether the Applicant has submitted the Referral within the prescribed four (4) month deadline.
32. In that respect, the Court recalls that the last decision in the Applicant’s case is the Decision of the Supreme Court of 27 June 2017. The Supreme Court had dismissed the Applicant’s request for revision as impermissible, because the value of the subject of dispute is below the threshold value set forth in the provisions of the LCP.
33. In the present Referral, the Applicant claims that he received Decision, Rev. No. 150/17 of the Supreme Court on 20 November 2017.
34. However, the Court notes that the Basic Court’s letter of receipt indicates that the Applicant received the contested decision of the Supreme Court on 16 August 2017.
35. In this regard, the Court refers to Rule 27 of the Rules of Procedure, which stipulate that:

(3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred”

[...]

(6) When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day.

36. Based on the case file, the Court notes that the time period for submitting the Referral to the Court ended on 16 December 2017, which was a Saturday. Hence, the four month period to file the Referral expired on Monday, 18 December 2017.

37. The Applicant submitted his Referral by mail, postmarked on 19 December 2017.
38. 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.
39. The Court reiterates 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 Decision as to Admissibility, of 25 August 2005, *O'Loughlin and others v. United Kingdom*, Application No. 23274/04, and see also Constitutional Court Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).
40. The Court notes that it is the duty of the applicant or of their representative 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 4 (four) months established in Article 49 of the Law and further specified in Rule 36 (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 36 (1) (c) of the Rules of Procedure, in its session held on 23 May 2018, 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



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi