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

Prishtina, on 12 November 2018
Ref. no.: RK 1288/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI20/18

Applicant

Zeqir Shamolli and others

Constitutional review of Judgment ARJ. UZVP. No. 60/2017 of the Supreme Court of the Republic of Kosovo of 30 October 2017

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 Zeqir Shamolli, Ismet Shamolli and Idriz Gashi from Ferizaj, Halim Gjergjizi from Prishtina, Enver Kelmendi from village Rufc i Ri, Municipality of Lipjan, Shefqet Kastrati and Edmond Shega from Durrës, Republic of Albania (hereinafter: the Applicants). The Applicants are represented by Bajram Morina, a lawyer from Ferizaj.

Challenged decision

2. The Applicants challenge Judgment ARJ. UZVP. No. 60/2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 30 October 2017, which was served on them on 20 November 2017.

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged Judgment ARJ. UZVP. No. 60/2017 of 30 October 2017, which allegedly violates the Applicants' rights guaranteed by Article 7 [Values], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial], in conjunction with Article 13 [Right to an effective remedy] and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms(hereinafter: the Convention).

Legal basis

4. The Referral is based paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the 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).

5. On 31 May 2018, Constitutional Court of the Republic of Kosovo (hereinafter: the Court) approved in the administrative session the amendment and supplement of the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Therefore, during the review of the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

6. On 20 February 2018, the Applicants submitted the Referral to the Court.

7. On 22 February 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Gresa Caka-Nimani.

8. On 1 March 2018, the Court notified the Applicants about the registration of the Referral. Pursuant to Article 22.4 of the Law, a copy of the Referral was sent to the Supreme Court, the Court of Appeals and the Central Bank of the Republic of Kosovo.

9. On 16 June 2018, the mandate of judges: Almiro Rodrigues and Snezhana Botusharova ended. On 26 June 2018, the mandate of judges Altay Suroy and Ivan Čukalović ended.

10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi, with a 9 (nine) year mandate.

11. On 10 September 2018, the President of the Court rendered the Decision on the appointment of new Review Panel, composed of judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Gresa Caka-Nimani.

12. On 10 October 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 9 March 2006, the Banking and Payments Authority of Kosovo, as the predecessor of the Central Bank of the Republic of Kosovo (hereinafter: the CBK), issued Decision No. 9, through which the license of the Credit Bank in Prishtina was revoked.

14. On 20 May 2011, the Applicants, against the CBK filed a claim for an administrative conflict. By this claim the Applicants requested: annulment of Decision No. 9 of the CBK of 10 March 2006, compensation of material and non-material damage, lost profit, setting of interest through financial expertise, and compensation of procedural costs.

15. On 14 October 2016, the Basic Court in Prishtina, by Decision A. No. 440/11, in the administrative procedure rejected as inadmissible the Applicants' claim with the reasoning that the latter was exercised after the deadline established by law.

16. On 4 November 2016, the Applicants filed an appeal with the Court of Appeals by which they requested: the annulment of Decision A. No. 440/11 of the Basic Court in Prishtina and Decision of CBK (No. 9) of 10 March 2006; the approval of their claim of 20 May 2011 and to remand the case to the first instance court for reconsideration and retrial.

17. On 18 July 2017, the Court of Appeals rendered Decision AA. UZH. No. 408/2016, by which it rejected as ungrounded the Applicants' appeal and upheld Decision A. No. 440/11 of the first instance court of 14 October 2017.

18. On 5 September 2017, the Applicants submitted a request to the Supreme Court for extraordinary review of Decision AA. UZH. No. 408/2016 of the Court of Appeals of 18 July 2017.

19. On 30 October 2017, the Supreme Court by Judgment ARJ. UZVP. No. 60/2017, rejected as ungrounded the Applicants' request for extraordinary review of the Decision AA. UZH. No. 408/2016 of the Court of Appeals of 18

July 2017, finding that the Applicants' allegations are ungrounded, because the second instance decision contains sufficient reasons and that all the facts in this case have been assessed, that the decision of the second instance court is clear and comprehensible, and that the substantive law was also correctly applied and the law was not violated to the detriment of the Applicants as they alleged.

Applicant's allegations

20. The Applicants allege that all decisions of the regular courts violated their rights protected by Articles 7, 24, 31 and 54 of the Constitution, on the following grounds:

> *"All the courts that have decided in the claimants' legal case against the respondent have, erroneously found that allegedly the claim of the claimants was submitted out of legal deadline based on the indisputable fact that neither the provisions of the Law on Administrative Conflicts of the former SFRY (Official Gazette no.4/77), as applicable law pursuant to Article 145 paragraph 2 of the Constitution of the Republic of Kosovo at the time when the challenged Decision was rendered, nor the provisions of Law No. 03/L-202 on Administrative Conflicts of Kosovo, as applicable law at the time when the claim was filed, limit the deadline for filing the claim for the initiation of the administrative conflict, in the case of the administration silence, as with the correct interpretation of the provisions of Article 26 of the applicable Law on Administrative Conflicts, namely the provisions of Article 29 of the LAC of Kosovo, it is concluded that:*
>
> *a) The legal institute by Article 26 of the applicable Law on Administrative Conflicts, namely by Article 29 of the LAC of Kosovo, is foreseen in the favour of the party and time limits from Article 26, namely from Article 29, have a character of minimal deadlines, so prior to their elapse no appeal can be filed with the second instance authority, respectively the claim cannot be filed with the court,*
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> *b) The claimant is bound to minimal deadlines, only, which means that prior to their elapse no request can be made to the competent body, respectively no claim can be filed at the court, and*
>
> *c) Once the minimal deadlines have elapsed, the claimant is not limited with any deadline in terms of filing the claim with the court, and these conclusions are also upheld by Judgment ARJ.UZVP. No. 6/2014 of the Supreme Court of Kosovo of 30.09.2014".*

21. The Applicants further allege that: *"...the courts, when deciding on the claim and the appeals of the claimants, have erroneously applied the substantive law to the detriment of the claimants and failed to apply the provision of the substantive law as they should have done, namely, did not apply the Law on Administrative Disputes of the former SFRY, which was in force at the time when the decision challenged by the claim was*

rendered, as applicable law in Kosovo under UNMIK Regulation No. 1999/24 on the applicable law in Kosovo (Article 184 LCP)".

22. Moreover, the Applicants also allege violation of Article 6 in conjunction with Article 13, and Article 1 of Protocol No. 1 of the Convention, referring to the case of the European Court of Human Rights, *Capital Bank AD v. Bulgaria*, for which they claim to be applicable in their case.

23. Finally, the Applicants address the Court with the request: 1) to annul Judgment ARJ. UZVP. No. 60/2017 of the Supreme Court of Kosovo, of 30 October 2017, Decision AA. No. 408/2016 of the Court of Appeals of Kosovo of 18 February 2017 and Decision A. No. 440/11 of the Basic Court in Prishtina, of 14 October 2016, as well as the Decision of CBK No. 9 of 10 March 2006, and to approve the Applicants' Referral as grounded in entirety and 2) to oblige the CBK to compensate the Applicants for material damage, lost profit with legal interest within the time limit of 15 (fifteen) days from the day the judgment becomes final or the case be remanded to the Supreme Court of Kosovo for reconsideration and retrial.

Admissibility of the Referral

24. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and as further specified by the Law and foreseen by the Rules of Procedure.

25. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

> *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.*
>
> *[...]."*

26. The Court also examines whether the Applicants have fulfilled the admissibility requirements set forth in the Articles: 48 [Accuracy of Referral] and 49 [Deadlines] of the Law, which stipulate:

> 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...".

27. As to the fulfillment of these criteria, the Court finds that the Applicants are authorized parties; they have exhausted available legal remedies; have specified the act of the public authority which they challenge before the Court and have submitted the Referral in time.

28. However, the Court also considers whether the Applicants have met the admissibility criteria established in Rule 39 (2) of the Rules of Procedure, which stipulates 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".

29. The Court recalls that the Applicants allege violations of their rights guaranteed by Articles 7, 24, 31 and 54 of the Constitution, which relate to the application of the substantive law to their detriment as a result of the application of the erroneous law.

30. As to the allegations of violation of Articles 7, 24 and 54 of the Constitution, the Court notes that the Applicants have only mentioned these specific articles and have not further reasoned as to how and why these Articles were violated by the public authorities or the regular courts.

31. Regarding the allegation of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, the Court notes that the Applicants relate the violation of this specific provision of the Constitution to the application of an inadequate law with regard to the calculation of time limits for filing a claim for administrative conflicts.

32. In this context, the Court refers to the ECHR case law which has consistently held that it is not the role of this Court to review the findings of the regular courts regarding the factual situation and the application of the substantive law (see ECHR Judgment, *Pronina v. Russia*, of 30 June 2005, application no. 65167/01).

33. The Court, however, points out that the case law of the ECHR also foresees the circumstances under which exceptions may be made to that stance. As a reference, the Court refers to the Judgment of the ECtHR in *Angjelkovic v. Serbia*, Judgment of 9 April 2013, No. 1401/08, paragraph 24, where the latter reiterated that it will not question the interpretation of the law by the courts, unless it is manifestly arbitrary or the decisions of those courts are not arbitrary or in any way manifestly unreasoned.

34. In this regard, the ECtHR emphasized that: *"...that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many authorities, Brualla Gomez de La Torre v.*

Spain, 19 December 1997, §31, Reports of Judgments and Decisions 1997-VIII). That being so, the Court will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness (see, mutatis mutandis, Adamsons v. Latvia, no. 3669/03, §118,24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice (see, mutatis mutandis, Farbers and Harlanova v. Latvia (dec.), no 57313/00, 6 September 2001, and, albeit in the context of Article 1 of Protocol No.1, Beyeler v. Italy [GC], no. 33202/96, §108, ECHR 2000-I)".

35. In this regard, the Court notes that, in its Judgment of 30 October 2017, the Supreme Court addressed and reasoned three issues: 1) the conditions and criteria for filing a claim for administrative conflicts; 2) the nature of the administrative act of the public authority (CBK); and 3) the applicable law in force, for the calculation of legal time limits for filing the claim for administrative conflicts.

36. As to the conditions and criteria for filing a claim for administrative disputes, the Supreme Court reasoned: *"Article 13 of the LAC has stipulated that an administrative conflict can be initiated only against the administrative act issued in the administrative procedure in the second instance... also against the administrative act of the first instance, against which ... no appeal is allowed. Article 14 of the same Law stipulates that the administrative conflict can also start when a competent body has not issued the relevant administrative act according to the request or complaint of the party, under the conditions foreseen by this law ('administration silence')".*

37. Regarding the nature of the administrative act issued by the public authority (CBK), the Supreme Court reasoned: *"Article 62.3 of the UNMIK Regulation no.2011/24 (Amendment of Regulation no.1999/20) stipulates that the CBK rules and orders in the administrative procedure are final decisions. Correct interpretation of these provisions means that the decision of the respondent-CBK no.9 dated 10.03.2006 is final, and no appeal/complaint may be filed against it, but an administrative conflict may be initiated".*

38. As to the applicable law in force, regarding the legal deadlines for filing a claim for administrative conflicts, the Supreme Court reasoned: *"The provision of Article 27, para.1 of the LAC foresees that the claim shall be submitted within thirty (30) days, from the day of service of the final administrative act on the party. The issue of the claim's time limits is assessed on the basis of the evidence-case file documents which confirm the date of service of the challenged act, as well as the date of the claim filed with the court. As both courts have correctly found that the respondent's decision no.9 of 10.03.2006 was received by the claimants on 20.03.2006 through their authorized representative... the claimants filed the claim with the court on 20.05.2011... namely after the deadline of 30 days when the deadline for filing the claim started to run , hence this Court considers that the lower instance courts have acted correctly when dismissing the claim of claimants as it has been filed after the legal deadline".*

39. Having regard to the foregoing considerations, the Court considers that in the present case there are no elements of illogical interpretation, as well as of the erroneous and arbitrary application of the law, because the regular courts, namely the Supreme Court, gave clear and complete reasons in its judgment as to the Applicants' allegations regarding the application of the applicable law relating to the timeliness of the Applicants' claim for administrative conflicts.

40. From this point of view, the Court considers that the Applicants did not indicate and substantiate that the proceedings before the Supreme Court were unfair or arbitrary, or that their fundamental rights and freedoms protected by the Constitution were violated as a result of allegations of application of the erroneous substantive and procedural law. In this case, no constitutional issue has been proven by the Applicants. (See: case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).

41. Therefore, as regards the abovementioned allegations, the Court considers that there has been no violation of Articles 31 of the Constitution.

42. Furthermore, the Court notes that the Applicants also allege violations of their rights guaranteed by Articles 6 and 13, in conjunction with Article 1 of Protocol No. 1 of the Convention, referred in particular to the ECtHR Judgment in *Capital Bank AD v. Bulgaria.*

43. In this regard, the Court will analyze and assess the similarities and differences of the procedural and substantive aspects between the Applicants' case and the case of *Capital Bank AD v. Bulgaria*, which they refer to.

44. The Court notes that in the Applicants' case, the regular courts in the administrative procedure rejected their claim due to the fact that its initiation was exercised out of the time limit set by law, i.e. the courts have not dealt at all with the merits of the case.

45. Unlike the Applicants' case, in the case *Capital Bank AD v. Bulgaria* before the regular courts of the Republic of Bulgaria the fulfillment of the procedural criteria (deadline) was not at all disputable. In fact, in the case of *Capital Bank AD v. Bulgaria*, it is clearly noted from the statement of facts that the regular courts reviewed the merits of the case.

46. The Court further notes that, after reviewing the merits by the regular courts of the Republic of Bulgaria, *Capital Bank AD*, dissatisfied with the domestic courts, had filed a complaint with the ECtHR. The latter, having fully assessed the circumstances of the case, found a violation of Article 6 of the Convention, in conjunction with Article 1 of Protocol No. 1 of the Convention by the national courts of the Republic of Bulgaria, because the latter based their findings on the findings of the Central Bank of Bulgaria (CBB), where the latter had concluded that *Capital Bank AD* was not able to fulfill its obligations (payments), subsequently deciding on the revocation of *the*

Capital Bank AD license, and then deciding on its bankruptcy (see ECHR findings, *Capital Bank AD v. Bulgaria*, final Judgment of 24 February 2006, Appeal No. 49429/99, para. 101 and 102).

47. Therefore, in the light of the foregoing, based on the statement of the facts of the case in comparison, the Court considers that the case *Capital Bank AD v. Bulgaria* cannot be applicable in the Applicants' case, because the regular courts in their case dealt only with the procedural aspects of filing the claim, namely with the fulfillment of the procedural criteria (deadline) and not with the merits of the claim, while in the case of *Capital Bank AD* before the national courts of the Republic of Bulgaria, the procedural aspects (admissibility), were not at all disputable, but the merits of the case.

48. From the reasons elaborated above, the Court further notes that the Applicants merely do not agree with the outcome of the proceedings before the regular courts, namely with the fact that their claim for the initiation of the administrative conflict was dismissed as out of time. However, the dissatisfaction of the Applicants with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of the violation of the constitutional rights. (see: *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see Resolution on Inadmissibility of the Constitutional Court in Case KI25/11, Applicant *Shaban Gojnovci*, 28 May 2012, paragraph 28; see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

49. In sum, the Court concludes that the Applicants' Referral is manifestly ill-founded on constitutional basis, because the arguments raised by the Applicants do not in any way justify their allegations of violation of their constitutional rights and that they did not sufficiently substantiate their allegations of constitutional violation.

50. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 39 (2) of the Rules of Procedure, it is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 39 (1) (d) and 56 (2) of the Rules of Procedure, on 10 October 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. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi Arta Rama-Hajrizi