



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

Prishtina, on 5 November 2018
Ref. no.: RK 1284/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI33/18

Applicant

Nadije Kadriu, Gëzim Kadriu and Albulena Kadriu

**Constitutional review of Judgment Rev. No. 327/2015 of the Supreme
Court of the Republic of Kosovo of 25 November 2015**

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 Nadije Kadriu, Gëzim Kadriu and Albulena Kadriu from Ferizaj (hereinafter: the Applicants), who are represented by Sahit Musa, a lawyer from Viti.

Challenged decision

2. The Applicants challenge the constitutionality of Judgment Rev. No. 327/2015 of the Supreme Court of 25 November 2015 (hereinafter: the challenged Judgment), which upheld Judgment CA. No. 1908/2013 of the Court of Appeals of 30 June 2013 and Judgment C. No. 552/2012 of the Basic Court in Ferizaj of 15 April 2013.
3. The challenged Judgment was served on the Applicants on 10 May 2016.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which, according to the Applicants' allegations, has violated their rights protected by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and the European Convention on Human Rights (hereinafter: the Convention). The Applicants have not referred to any specific provision of the Constitution.

Legal basis

5. 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 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).
6. On 31 May 2018, in an administrative session the Court adopted the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force fifteen (15) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

7. On 8 March 2018, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 9 March 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
9. On 14 March 2018, the Court notified the Applicants about the registration of the Referral. A copy of the Referral, in accordance with Article 22.4 of the Law, was sent to the Supreme Court.
10. On 8 May 2018, the Court requested additional information from the Basic Court in Ferizaj, in order to verify the date of receipt of the challenged Judgment Rev. No.327/2015 of 25 November 2015 by the Applicants.

11. On 22 May 2018, the Basic Court in Ferizaj informed the Court that the challenged Judgment was served on the Applicants on 10 May 2016.
12. 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.
13. 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.
14. On 10 September 2018, the President of the Court rendered a decision on the appointment of a new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).
15. 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

16. In 2011, the Applicants filed a statement of claim with the Basic Court in Ferizaj against the Insurance Company Insig for compensation of the capitalized rent in the amount of 17,218.00 euro, covering the period from 1 July 2004 to 17 October 2012, with legal interest of 20%, starting from the date the statement of claim was filed.
17. On 15 April 2012, the Basic Court in Ferizaj by Judgment C. No. 552/12 rejected the statement of claim of the Applicants and reasoned that the Applicants waived the annulment of the agreement concluded between them, whereby the legal basis for requesting the compensation of the rent ceased to exist, for which the parties agreed through a settlement agreement to accept the damages claimed on 15 September 2004.
18. The Applicants filed an appeal with the Court of Appeals, alleging violation of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law, with a proposal that the appealed judgment be modified and the statement of claim be approved, or the appealed judgment be quashed and the case be remanded for reconsideration and retrial.
19. On 30 June 2013, the Court of Appeals by Judgment CA. No. 1908/2013 rejected as ungrounded the Applicants' appeal and upheld Judgment C. No. 552/12 of the Basic Court of Ferizaj of 15 April 2012.
20. Against this judgment, the Applicants filed a request for revision with the Supreme Court, alleging essential violations of the provisions of the contested procedure and erroneous application of the substantive law.

21. On 25 November 2015, the Supreme Court by Judgment Rev. No. 327/2015 rejected the Applicants' request for revision as ungrounded, upholding the decisions of the lower instance courts.

Applicant's allegations

22. The Applicants allege that their rights protected by the Constitution and the Convention were violated by the regular courts as a result of rejection of the statement of claim, by which they had requested compensation of the capitalized rent by the Insurance Company Insig.
23. In addition, the Applicants proposed to the Court to approve their Referral and to remand the case for retrial to the first instance, or to modify the judgments of the regular courts in order to exercise their right to compensation of rent.

Admissibility of the Referral

24. The Court first examines whether the Applicants have fulfilled the admissibility requirements established by the Constitution, 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 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".

[...]

26. The Court further refers to paragraphs 1 and 2 of Article 47 [Individual Requests] of the Law, which foresee:

Article 47 of Law [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".

27. The Court also examines whether the Applicants have met the admissibility requirements provided by Article 48 [Accuracy of Referral] of the Law, which stipulates:

Article 48 of Law
[Accuracy of 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”.

28. Regarding the fulfillment of these requirements, the Court notes that the Applicants are authorized parties; they have exhausted available legal remedies; and they have specified the act of the public authority which they challenge before the Court.
29. However, the Court should also assess whether the Referral was submitted in accordance with the deadlines set out in Article 49 [Deadlines] of the Law:

Article 49 of Law
[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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. [...]”

30. The Court also takes into account Rule 39 [Admissibility Criteria], namely sub-rule (1) (c) of the Rules of Procedure, which foresees:

“(1) The Court may consider a referral as admissible 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. The Court recalls that the Applicants challenge the constitutionality of Judgment Rev. No. 327/2015 of the Supreme Court of 25 November 2015, which was served on them on 10 May 2016.
32. In this regard, the Court notes that the Applicants submitted the Referral to the Court on 8 March 2018, which means that the Referral was submitted after more than one (1) year.
33. Therefore, the Court finds that the Referral was submitted by the Applicants after the deadline of four (4) months.
34. The Court recalls that the objective of the four-month legal deadline, under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases raising constitutional issues

are dealt with within a reasonable time and that past decisions are not continually open to challenge (See case Decision, *O'Loughlin and others v. United Kingdom*, Application No. 23274/04, ECtHR, Decision of 25 August 2005, see case No. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).

35. Therefore, the Applicants' Referral was submitted after the legal time limit prescribed by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, and as such it is inadmissible for further consideration.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 10 October 2018, unanimously

DECIDES

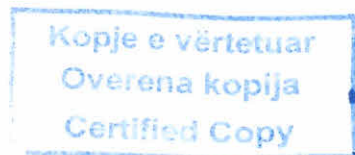
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bekim Sejdiu

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.