



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

Prishtina, on 29 november 2018
Ref. No.:RK 1290/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI53/18

Applicant

Hajri Ramadani

**Constitutional review of Judgment PML No.181/2016 of the Supreme Court
of Kosovo, of 13 February 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 Hajri Ramadani, residing in the village Brodesan, Municipality of Dragash (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment PML. No. 181/2016 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 13 February 2017. The Applicant was served with the challenged decision on 19 March 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant also alleges violation of Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of 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, the Court adopted in the administrative session 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 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

6. On 5 April 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 11 April 2018, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Arta Rama-Hajrizi and Selvete Gërxhaliu-Krasniqi.
8. On 18 April 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues 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.
11. On 22 August 2018, the President of the Court rendered a decision to replace the Judge Rapporteur, and instead of Judge Ivan Čukalović Judge Radomir Laban was appointed.
12. On 25 September 2018, the President of the Court appointed a new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Bajram Ljatifi.
13. On 28 September 2018, the Court requested the Basic Court in Prizren to submit to the Court the acknowledgment of receipt indicating the date when the Applicant was served with Judgment PML. No. 181/2016 of the Supreme Court of 13 February 2017.
14. On 4 October 2018, the Basic Court in Prizren informed the Court that it twice tried to submit to the Applicant Judgment PML. No. 181/2016 of 13 February 2017, namely the delivery was tried on 25 February 2017 and on 2 March 2017, but could not be submitted because the Applicant was not at the address presented to the Court. The Basic Court further explains that after two attempts to submit the aforementioned decision, it published the latter on the notice board until 19 March 2017.
15. On 5 November 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. On 1 December 2014 the Basic Prosecution in Prizren - Serious Crimes Department filed Indictment number PP. No. 244/2014 against the Applicant under a grounded suspicion that he has committed the criminal offense "*Abusing official position or authority*" under Article 422 para. 1 and 2, sub-paragraphs 2.1 and 2.2 of the Criminal Code of the Republic of Kosovo (hereinafter: the CCRK).
17. The Applicant, among other things, was accused of having violated the Law on the Education Institution by not implementing Decision Ref. 10/14, prot. 96 of 28 April 2014, of the Education Inspectorate in Prizren, by not complying with the instructions issued by this decision.
18. On 24 December 2015, the Basic Court in Prizren - Serious Crimes Department (hereinafter: the Basic Court), by Judgment P. No. 275/14, found the Applicant guilty and sentenced him to imprisonment of 1 (one) year, a punishment which will not be executed if the Applicant does not commit another criminal offense within 2 (two) years. Against the Applicant was also imposed a prohibition on exercising the functions in the public administration for a period of 2 (two) years.

19. On an unspecified date, the Applicant filed an appeal with the Court of Appeals of Kosovo against Judgment P. No. 275/14 of the Basic Court of 24 December 2015, alleging essential violation of the provisions of the criminal procedure, erroneous determination of factual situation and violation of the criminal law. On the other hand, the Basic Prosecution in Prizren filed an appeal requesting effective imprisonment of the Applicant.
20. On 3 May 2016, the Court of Appeals of Kosovo, by Judgment PAKR. No. 184/2016 rejected as ungrounded the Applicant's appeal and upheld the Judgment of the of first instance court. The Court of Appeals of Kosovo in its judgment held that the latter was clear, concrete and comprehensible, and in its reasoning were given the reasons on the decisive facts by giving a detailed answer to all the Applicant's allegations.
21. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against Judgment P. No. 275/14 of the Basic Court of 24 December 2015 and Judgment PAKR. No. 184/2016 of the Court of Appeals, of 19 May 2016, claiming that these judgments were rendered with essential violations of the provisions of criminal procedure and violation of the criminal law.
22. On 13 February 2017, the Supreme Court of Kosovo, by Judgment PML. No. 181/2016 rejected as ungrounded the request for protection of legality filed by the Applicant

Applicant's allegations

23. The Court recalls that the Applicant alleges that Judgment PML. No. 181/2016 of the Supreme Court of 13 February 2017 violates his right guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair Trial and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 55 [Limitation of Fundamental Rights and Freedoms] of the Constitution, in conjunction with Article 6 of the ECHR.
24. The Applicant claims that he was served with the challenged decision on 8 December 2017, and further alleges that: *"The Supreme Court and the lower instance courts when deciding on finding the applicant guilty, have applied a double standard by not approving the applicant's request to find that he had no power to enforce the decision of the Education Inspectorate for annulment of the decision issued by the President of the Municipality. Equality before the law was also violated by the fact that he was found guilty based on the actions of the other accused Sh.N., because there can be no criminal offence if the falsification is not proven..."*
25. The Applicant further alleges that *"the courts of three instances that have acted on this matter have been partial, politically influenced and have not decided on the basis of proven facts but on the basis of assumptions, even when the subject of the charge did not exist [...] the applicant has not been provided fair trial regardless of the evidence that has been in his favour, all of these have been interpreted to the detriment of the applicant"*. The Applicant alleges that the

employment relationship was terminated as a result of the decisions of the regular courts.

26. The Applicant requests the Court to declare invalid Judgment PML. No. 181/16 of the Supreme Court of Kosovo, of 13 February 2017 and to remand the judgment for retrial to the Supreme Court.

Admissibility of the Referral

27. The Court first examines whether the admissibility requirements established by the Constitution, as further specified by the Law and the Rules of Procedure have been met.

28. 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”.

29. In that regard, the Court considers that the Applicant is an authorized party and has exhausted all the legal remedies available to him.
30. However, the Court also refers to Article 49 [Deadlines] of the Law, which provides:

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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced..”.

31. The Court also takes into account Rule 39 [Admissibility Criteria] (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 [...]”

32. At the outset, the Court refers to the date of service of the final decision and the date of the submission of the Referral to the Court to assess whether the

Applicant has submitted the Referral within the specified deadline of 4 (four) months.

33. In this regard, the Court recalls that the final decision in the Applicant's case is Judgment PML. No. 181/2016 of the Supreme Court of 13 February 2017.
34. The Court notes that the Applicant alleges that he was served with the challenged decision on 8 December 2017, but the Applicant did not substantiate this allegation by any evidence, acknowledgment of receipt or a written document.
35. However, the Court, upon the examination of additional documents submitted by the Basic Court in Prizren regarding the date of receipt of the challenged decision, noted that the Basic Court in Prizren twice tried to submit to the Applicant the challenged judgment by mail service.
36. First, on 25 February 2017, the Basic Court in Prizren tried to send the challenged judgment to the address of the Applicant by mail service, the acknowledgment of receipt was returned to the Basic Court in Prizren, with the explanation that the Applicant was displaced together with his family to Prizren.
37. Then, on 2 March 2017, the Basic Court in Prizren tried for the second time to send the challenged decision to the Applicant's address by mail service, the acknowledgment of receipt was returned to the Basic Court in Prizren with the explanation that the Applicant was displaced together with his family to Prishtina.
38. It is clearly seen from the case file that it was not possible that the Applicant is found at the registered address which the Applicant himself submitted to the Court.
39. In accordance with the legal provisions, the Basic Court, after two unsuccessful attempts to submit Judgment PML. No. 181/2016 of 13 February 2017 by mail service, has announced it on the notice board of the Basic Court and kept it on the notice board of the Basic Court until 19 March 2017.
40. In this regard, the Court refers to the provisions of paragraph 4 of the Article 478 [Documents to be Personally Served] of the Criminal Procedure Code, No. 04/L-123, which establishes:

Article 478

“4. If the decision or appeal cannot be served on the defendant because he or she has failed to report his or her address, it shall be displayed on the bulletin board of the court and, at the end of eight (8) days from the date of display, it shall be assumed that valid service has been effected”.

41. Based on all of the above, the Court finds that the Basic Court has acted in accordance with the relevant legal provisions.
42. Accordingly, the Court considers that the Applicant was served with the challenged decision on 19 March 2017, whereas he submitted the Referral to the

Court on 5 April 2018, which means that the Applicant's Referral was submitted out of the prescribed legal deadline.

43. The Court reiterates 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 the constitutional issues are dealt within a reasonable time and to prevent the authorities and other interested parties from being kept in a state of insecurity over a longer period of time (see: ECtHR decision, *P.M. v. United Kingdom*, No. 6638/03, 24 August 2004, see ECtHR decision *Olivier Gaillard v. France*, No. 47337/99 of 11 July 2000, see ECtHR decision *Franz Hofstädter v. Austria* No. 25407/94, 12 September 2000).
44. This deadline also enables the possible Applicant to examine whether he wishes to file a request and, if he wishes, to decide on the specific complaints and arguments to be raised (see: ECtHR decision *O'Loughlin and Others v. United Kingdom*, application No. 23274/04), and at the same time facilitates the determination of the facts in this case, as over time, any fair consideration of the issues raised becomes problematic (See: ECtHR judgment, *Nee v. Ireland*, No. 52787/99, of 30 January 2003).
45. This rule marks out the time limit of supervision carried out by the Court and signals to both individuals and state authorities the period beyond which such supervision is no longer possible (see ECHR Decision *Walker v. United Kingdom*, No. 34979/97 of 25 January 2000, see Judgment of the ECtHR *Sabri Güneş v. Turkey*, of 29 June 2012, paragraph 40).
46. Therefore, the Court finds that the Applicant's Referral was not filed within the legal time limit established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure. Therefore, the Court finds that the Applicant's Referral is inadmissible because the Applicant's Referral was filed out of legal time limit.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and in accordance with Rule 39 (1) (c) of the Rules of Procedure, on 5 November 2018, unanimously

DECIDES

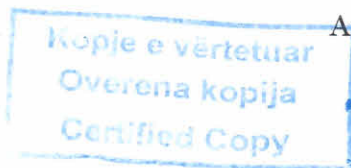
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.