



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtinë, 25 March 2019
Ref. no.:RK 1338/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI22/18

Applicant

Enver Pllana

**Constitutional review of Decision Rev. No. 225/2017 of the Supreme
Court of 15 November 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 Enver Pllana (hereinafter: the Applicant) from Mitrovica.

Challenged decision

2. The Applicant challenges Decision [Rev. No. 225/2017] of the Supreme Court of Kosovo of 15 November 2017, which rejected as ungrounded, his request for revision against Decision Ac. No. 1473/2015 of the Court of Appeals of 17 January 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged decision of the Supreme Court. The Applicant does not refer in particular to any specific constitutional provision.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 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 Constitutional Court of the Republic of Kosovo (hereinafter: 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 (fifteen) 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 Court

6. On 21 February 2018, the Applicant submitted the Referral to the Court.
7. On 22 February 2018, the President of the Court appointed Judge Altay Suroy, as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
8. On 14 March 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 appointed Judge Nexhmi Rexhepi, instead of Judge Altay Suroy, whose mandate of the Judge ended on 26 June 2018.

12. On 8 October 2018, the President of the Court appointed new Review Panel composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Safet Hoxha.
13. On 27 February 2019, 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

14. On 16 March 2001, the Applicant addressed the Kosovo Energy Corporation (hereinafter: KEK) with a request for reinstatement to work and work duties performed before being dismissed by the KEK interim authority.
15. On the same date, KEK rejected the Applicant's request, with the following reasoning, *"setting from the provisional Rules for employment relationship at Kosovo Energy Corporation, wherein Article 3, the cited act defines that: "all the employees forcedly dismissed before 31 December 1990 and later on, have the right to return at work at the latest until 1 July 2000", and in the present case, the employee was informed in written form on 16 March 2001, the conditions stipulated under Article 3 of the cited act for the reinstatement of the employee at work have not been met"*.
16. On an unspecified date, the Applicant filed an objection against the first-instance decision of the KEK to the appeal commission, namely the KEK Executive Board.
17. On 26 April 2001, the Executive Board of the KEK rejected the objection of the Applicant and upheld the first instance decision.

First proceeding initiated by the Applicant before the Municipal Court in Prishtina

18. On 10 May 2001, the Applicant filed a lawsuit with the Municipal Court in Prishtina against the decision of the KEK Executive Board.
19. On 15 October 2001, the Municipal Court of Prishtina, by Decision C1. No. 201/01) dismissed the lawsuit of the Applicant, as out of time.
20. The Applicant filed an appeal against the decision of the Municipal Court in Prishtina with the District Court in Pristina *"on the grounds of essential violations of the provisions of the contested procedure, incorrect and incomplete determination of factual situation and incorrect application of the substantive law"*.
21. On 23 February 2005, the District Court in Prishtina by Decision CA. No. 122/2003 approved the Applicant's appeal, so that it annulled the decision of the Municipal Court and remanded the case for retrial.
22. On 15 June 2005, in the repeated proceedings, the Municipal Court in Prishtina, by Decision C. No. 78/05 dismissed as inadmissible the Applicant's

lawsuit, because he failed to specify and supplement the lawsuit within the given time limit, as requested by the Municipal Court.

23. The Applicant filed an appeal against the decision of the Municipal Court in Prishtina with the District Court in Pristina *“on the grounds of essential violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and incorrect application of the substantive law”*.
24. On 5 June 2008, the District Court in Prishtina, by Decision Ac. No. 304/2006, rejected as ungrounded the Applicant's appeal and upheld the decision of the Municipal Court in entirety.

Second proceeding initiated by the Applicant before the Municipal Court in Prishtina

25. On 25 May 2005, the Applicant filed again a lawsuit with the Municipal Court in Prishtina against the decision of the KEK Executive Board with the same allegations.
26. On 27 June 2012, the Municipal Court in Prishtina (by Decision C. No. 178/05) dismissed the Applicant's lawsuit, as he did not submit the required documents within the given deadline and corrected the lawsuit.
27. The Applicant filed appeal with the Court of Appeals against the Decision of the Municipal Court in Prishtina *“on the grounds of essential violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and incorrect application of the substantive law”*.
28. On 27 May 2013, the Court of Appeals by Decision CA. No. 4557/2012 rejected as ungrounded, the Applicant's appeal and upheld the decision of the Municipal Court in entirety.
29. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against the decision of the Court of Appeals *“on the grounds of essential violations of the contested procedure provisions”*.
30. On 4 February 2014, the Supreme Court, by Decision Rev. No. 295/2013, approved the Applicant's revision, so that it annulled the decision of the Court of Appeals, while it remanded the decision of the Municipal Court for retrial.
31. On 30 January 2015, in the repeated proceedings, the Basic Court in Prishtina (by Decision C. No. 875/14) dismissed as inadmissible the Applicant's lawsuit. In the reasoning, the Basic Court states: *“the claimant submitted the request for reinstatement to working place with the respondent in March 2001, that the request in question was rejected by the Decision of the respondent of 16 March 2001, namely 26 April 2001, while the lawsuit was submitted to the court on 25 May 2005, therefore Court found that the lawsuit that was submitted is inadmissible as it was filed four years after the Decision on rejection of the request for reinstatement to the working place was served on him. [...] The employee who is not satisfied with the final Decision of the*

competent authority in the organization or if this authority does not render a Decision within 30 days from the date of submission of the request, namely the objection, has the right to request protection of his/her rights before the competent court within a time limit of 15 days.”

32. The Applicant filed an appeal with the Court of Appeals against the decision of the Basic Court in Prishtina *“on the grounds of essential violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and incorrect application of the substantive law”*.
33. On 17 January 2017, the Court of Appeals (by Decision CA. No. 1473/2015) rejected as ungrounded, the Applicant's appeal and upheld the decision of the Basic Court in entirety.
34. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against the decision of Court of Appeals *“on the grounds of essential violations of the contested procedure provisions and the fact that the claimant in the former Municipal Court in Prishtina had previously filed a lawsuit for the protection of his rights from employment relationship, registered under no. CL No. 201/2001”*.
35. On 15 January 2017, the Supreme Court (by Decision Rev. No. 225/2017) rejected as ungrounded the Applicant's revision and upheld the decision of the Court of Appeals. In the reasoning of the decision, the Supreme Court stated, *“In the revision of the authorized representative of the claimant it is stated that the essential violations of Article 182. 1., item (n), of the LCP, are related to the fact that the claimant submitted a claim for protecting his rights from his employment relationship, which was registered under number CL. No. 201/20001, to the former Municipal Court in Prishtina, a fact which is not put in question by the court of the first instance and the second instance. These allegations were assessed as ungrounded because even if this fact (previous submission of the claim of the claimant) stands, the claim that was submitted previously is not a subject of review but the claim of the claimant submitted later on, on 25 May 2005, is the object of review, which would be inadmissible not only because it was submitted out of the legal time limit for its submission, but also due to the existence of litispendence within the meaning of Article 263. 3 of the LCP, which stipulates that during the time of existence of the litispendence, a new adjudication between same parties cannot be initiated for the same statement of claim. If such thing happens, the Court rejects the claim that was submitted afterwards.”*

Applicant's allegations

36. In his Referral, the Applicant does not specify what fundamental rights and freedoms guaranteed by the Constitution he considers to have been violated. The Applicant's allegations are based on that his request *“was not decided in a fair manner”* by the regular courts.
37. In addition, the Applicant requests the Court that: *“The decision of the Court, in accordance with the evidence provided by me, enables me to reinstate to my working place”*.

Admissibility of the Referral

38. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, further specified in the Law, and foreseen in the Rules of Procedure.
39. 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.”

40. The Court further assesses whether the Applicant has met the admissibility criteria as foreseen by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47 [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.“

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... .”

41. As to the fulfillment of these criteria, the Court finds that the Applicant filed the Referral in the capacity of the authorized party, challenging the act of the public authority, namely Decision (Rev. No. 225/2017) of the Supreme Court of 15 January 2017, after exhaustion of all legal remedies provided by law. The

Applicant also filed the Referral in accordance with the deadline prescribed in Article 49 of the Law.

42. However, when assessing whether the Applicant fulfilled the admissibility requirements provided by Law, the Court also refers to Article 48 of the Law, which provides the Applicant with an obligation to specify in his Referral submitted to the Court the rights and freedoms that have allegedly been violated.
43. The same requirement is clearly laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (1) (d) stipulates:

“(1) The Court may consider a referral as admissible if:

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.”

44. Accordingly, the Court emphasizes that, in order to consider that the Referral meets the admissibility requirements, the Applicant is obliged to accurately indicate in his referral what rights and freedoms have been violated and to adequately present the facts and allegations of violation of rights or provisions guaranteed by the Constitution.
45. The Applicant did not specify what rights and freedoms he claims to have been violated by an act of a public authority, namely by the challenged decision, but he only mentions that *his referral addressed to the authorities of justice was not decided in fair manner*. In addition, the Applicant does not accurately state the facts and allegations of violation of constitutional rights.
46. In the circumstances of this case, the Applicant's Referral is in accordance with the requirements established in paragraphs 1 and 7 of Article 113 of the Constitution and Articles 47 and 49 of the Law. However, the Applicant's Referral does not meet the admissibility requirements as foreseen by Article 48 of the Law and item (d) of paragraph (1) of Rule 39 of the Rules of Procedure. That assessment is in line with the existing case law (see: case of the Constitutional Court No. KI91/17, Applicant: *Enver Islami*, of 14 December 2018, and case of the Constitutional Court No. KI142/18, Applicant: *Luan Ibrahimi*, of 20 December 2018).
47. In conclusion, in accordance with Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7 of the Constitution, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 27 February 2019, unanimously

DECIDES

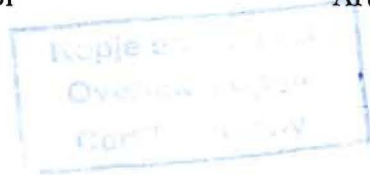
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law, and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.