



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

Prishtina, 21 October 2019
Ref. no.:RK 1453/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI127/18

Applicant

Tush Kolgjeraj

**Constitutional review of Decision PN. No. 825/17 of the Court of Appeals
of 6 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 Tush Kolgjeraj from village Zym, municipality of Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017, in conjunction with Decision EDGJ. No. 380/2017 of the Basic Court in Prizren.
3. The Applicant was served with the challenged decision on 17 October 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment] and Article 29 [Right to Liberty and Security] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on paragraphs 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 the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 31 [Initiation of proceedings] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 31 August 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 17 September 2018, the President of the Court appointed Judge Safet Hoxha, as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.
8. On 30 November 2018, the Court notified the Applicant about the registration of the Referral. The Court also requested the Applicant to complete the standard referral form.
9. On 19 December 2018, the Applicant submitted to the Court the completed standard referral form.
10. On 13 March 2019, the Court notified the Court of Appeals about the registration of the Referral. By this notice, the Court requested the Court of Appeals to provide a copy of the acknowledgment of receipt, namely, information when the Applicant was served with the challenged decision.
11. On 26 March 2019, the Basic Court in Prizren submitted a copy of the acknowledgment of receipt as an evidence that the challenged decision was served on the Applicant on 17 October 2017.

12. On 25 September 2019, after considering the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

Summary of facts regarding the enforcement procedure P. No. 331/2014

13. On 29 September 2014, by Order P. No. 311/2014 of the Private Enforcement Agent M.R. from Prizren approved the proposal for reinforcement of the KRU Regional Irrigation Company "Radoniqi-Dukagjini" (hereinafter: KRU Radoniqi- Dukagjini) against the Applicant and his brother Lorenc Kolgjeraaj due to unpaid obligations in connection with water supply.
14. On 31 October 2014, the Applicant filed an objection with the Basic Court in Prizren against Order P. No. 311/2014 of the Private Enforcement Agent.
15. On 20 February 2015, the Basic Court in Prizren rendered Decision P. No. 331/14, dismissing the Applicant's objection for failure to pay the court fee.
16. Following this decision, based on the Referral of Lorenc Kolgjeraaj, the Applicant's brother, the Court decided on two occasions, in Case KI 74 17 where the Referral was declared inadmissible because of non-exhaustion and in Case KI 70 19 where the referral was dismissed because it was not completed and substantiated by the requested documentation.

Summary of facts relating to the sentence imposed on the Applicant for insulting the court and participants in the enforcement procedure P. No. 331/2014

17. On 8 April 2015, the Basic Court in Prizren also rendered Decision P. No. 331/14, by which, due to the insult of the court and the other participants in the proceedings presented in the objection of 31 October 2014, sentenced the Applicant with a fine. The Basic Court stipulated that the fine could be converted to imprisonment if it is not paid within the stipulated time.
18. On an unspecified date, the Applicant against Decision P. No. 331/14 of the Basic Court in Prizren of 8 April 2015, filed the appeal with the Court of Appeals without specifying the grounds of appeal.
19. On 10 October 2016, the Court of Appeals rendered Decision AC. No. 1836/15, which rejected the Applicant's appeal as ungrounded and upheld Decision P. No. 331/2014, of the Basic Court of 8 April 2015.
20. On 27 June 2017, the Basic Court in Prizren, having previously warned the Applicant, rendered Decision EDGJ. No. 380/17, replacing the fine with imprisonment sentence for not paying the fine within the prescribed time limit.

21. On 11 July 2017, the Applicant was taken to the Detention Center in Prizren to serve the imprisonment sentence imposed by Decision EDGJ. No. 380/17 of 27 June 2017.
22. On 14 July 2017, the Basic Court in Prizren rendered Decision EDGJ. No. 380/17, which annulled the previous Decision (EDGJ No. 380/17 of 27 June 2017) because the Applicant paid the fine imposed by Decision P. No. 331/14 of the Basic Court. In its reasoning, the Basic Court stated *„According to the payment order of the Basic Court in Prizren with fiscal number: [...] of 14.07.2017, which was executed by B. K, and on behalf of the convict T. K, paid a fine of [...] Euro, therefore, the Court considers that the reasons for replacing the fine with imprisonment have ceased to be valid, as the payment of the imposed fine was made, and the latter should be released immediately on 14.04.2017“*.
23. On 27 July 2017, the Applicant against Decision P. No. 380/17 and Decision P. No. 331/14 of the Basic Court in Prizren, filed a request for protection of legality on the grounds of *„essential violations of the provisions of the criminal procedure and violation of the criminal law, with the proposal that the Supreme Court in Prishtina, after considering the appeal, approves the appeal as grounded and annuls the abovementioned decisions or remand the latter for reconsideration“*.
24. On 23 August 2017, the Basic Court in Prizren rendered Decision EDGJ. No. 380/17, dismissing as inadmissible the Applicant's request for protection of legality with a reasoning *„in the present case, according to the provisions of Article 433 of the CPCCK, it is clearly stated that: “A request for protection of legality may be filed by the Chief State Prosecutor, the defendant or his or her defence counsel ...”, whereas Article 434, paragraph 2, item 2.2 of the same Law provides that: “The competent pretrial judge, single trial judge or presiding trial judge of the Basic Court shall dismiss a request for protection of legality if by a ruling the request was filed by a person not entitled thereto” Therefore, having regard to these legal provisions, the abovementioned circumstances and facts that the fine imposed on T. K was in the enforcement proceedings for insulting the judge and the creditor, and which fine, for failure to pay the same within the stipulated time limit, was substituted with imprisonment, which means that during the course of the proceedings the latter was not in the capacity of the convict in the proceedings, although the fine imposed was replaced by imprisonment, therefore, as a consequence of all this, and in light of the abovementioned facts, this court considers that the convict's request should be dismissed as inadmissible“*.
25. On an unspecified date, the Applicant filed appeal with the Court of Appeals against the Decision (EDGJ No. 380/17 of 23 August 2017) in the form of a request for a stay of execution of the criminal sanction.
26. On 10 October 2017, the Court of Appeals rendered Decision AC. No. 825/17, which rejected the Applicant's appeal as ungrounded and upheld Decision P. No. 380/17 of the Basic Court, of 23 August 2017, reasoning that, *„According to the assessment of the President of the Court of Appeals of Kosovo, as it appears from the case file, the convict based both his request and his complaint on the*

fact that he filed a request for protection of legality before the Supreme Court of Kosovo, and in relation to this, requested that the sentence be postponed until such decision is obtained by this authority, but, the Court of Appeals assesses that the fact that the convict filed a request for protection of legality before the Supreme Court of Kosovo does not constitute a ground to postpone the execution of the sentence in accordance with Article 29, paragraphs 1 and 2 of the LECS, which explicitly cites the examples of delaying the execution of a sentence in connection with extraordinary legal remedies, therefore, based on such circumstances, the second instance court finds that the requirements for postponing the execution of the sentence are not fulfilled“.

Applicant's allegations

27. The Applicant alleges that the challenged decision violated his rights guaranteed by Articles 24, 27 and 29 of the Constitution, without reasoning how the violation occurred, but merely mentioning them in his Referral.
28. The Applicant formulated his Referral in the form of questions asked to the Court regarding the process of rendering the challenged decision, in particular, the Applicant addresses the Court with the question whether the challenged decisions are in compliance with the Constitution and whether all procedural actions envisaged by the law were respected in rendering the latter.
29. Finally, the Applicant requests the Court: *“The right to pay me back € 500 [...] because I was unlawfully punished”.*

Admissibility of the Referral

30. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
31. 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”.

32. In addition, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], and 48 [Accuracy of the Referral] of the Law, which establish:

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."

33. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017, after exhaustion of all legal remedies provided by law. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law.
34. However, the Court examines whether the requirements laid down in Article 49 [Deadlines] of the Law and item (c) of paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure have been met. They foresee the following:

Article 49 of the 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..."

Rule 39 of the Rules of Procedure
[Admissibility Criteria]

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

[...]

(c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant; and

[...]"

35. In this regard, the Court recalls that the Applicant was served with the challenged Decision [PN. No. 825/17] of the Court of Appeals of 6 October 2017, on 17 October 2017, based on the acknowledgment of receipt submitted to the Court by the Basic Court in Prizren.

36. The Court notes that the Applicant submitted his Referral to the Court on 31 August 2018. Accordingly, the Court finds that the Applicant's Referral was filed after the legal deadline of 4 (four) months established in the Law and the Rules of Procedure.
37. The Court recalls that the objective of the 4 (four) months legal deadline in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to be challenged (see, *inter alia*, the ECtHR case *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39, see, also among other cases, the cases of the Court No. KI140/13, Applicant: *Ramadan Cakiqi*, Resolution on Inadmissibility of 3 March 2014, paragraph 24, and KI120/17, Applicant: *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39).
38. In conclusion, for the foregoing reasons, the Court finds that the Referral was not filed within the legal deadline stipulated by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, consequently, the Court cannot consider the merits of the case, namely the Applicant's allegations of constitutional violations.
39. Therefore, the Court finds that the Referral is inadmissible because it was filed out of the legal time limit provided by law.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) c) of the Rules of Procedure, on 25 September 2019, unanimously

DECIDES

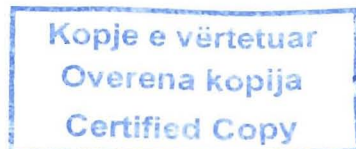
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Arta Rama-Hajrizi



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