



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

Prishtina, on 11 October 2019
Ref. no.: RK 1445/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI24/19

Applicant

Valon Miftari

**Constitutional review of Decision Rev.no.276/18 of the Supreme Court,
of 10 September 2018**

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 Valon Miftari (hereinafter: the Applicant), residing in village Duzhnje, of Gjakova Municipality.

Challenged decision

2. The Applicant challenges the constitutionality of the Decision Rev.no. 276/18 of the Supreme Court, of 10 September 2018 (hereinafter: the Challenged Decision), which was served on him on 4 October 2018.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, whereby the Applicant alleges to have been violated his rights guaranteed by Articles: 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a Fair Trial], of the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, and Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (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).

Proceedings before the Constitutional Court

5. On 4 February 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 February 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (presiding), Bajram Ljatifi and Safet Hoxha (members).
7. On 27 June 2019, the Court notified the Applicant about the registration of the Referral and pursuant to the law sent a copy of the Referral to the Supreme Court. On the same date, the Basic Court in Gjakova was requested to submit the acknowledgment of receipt of the challenged Decision as evidence of the receipt of the challenged Decision by the Applicant.
8. On 15 July 2019, the Basic Court in Gjakova informed the Court that the Applicant was served with the challenged Decision on 4 October 2018.
9. On 25 September 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. By decision of the Supreme Court, Ap-Kz.no. 221/2011 of 6 December 2011, the Applicant was acquitted of the charge of having committed the criminal offence pursuant to Article 405, paragraph (2) of the CPCK.
11. On 1 June 2012 the Applicant, having been acquitted of all charges by a final judgment, submitted an employment dispute claim to the Basic Court in Gjakova against the Ministry of Internal Affairs, respectively the Kosovo Police, seeking the annulment of Kosovo Police acts whereby he was terminated his employment relationship.
12. On 22 July 2016, the Basic Court in Gjakova by Decision C.no.192 / 2012, after assessing the admissibility criteria of the claim, concluded that the claim was out of time (belated).
13. The Applicant submitted an appeal to the Court of Appeals against the Decision of the Basic Court in Gjakova, of 22 July 2016, for alleged violations of the substantive and procedural law.
14. On 14 April 2018, the Court of Appeals, by Decision AC. no.3200 / 2016, rejected as unfounded the Applicant's appeal and upheld the Decision of the Court of First Instance of 22 July 2016, in its entirety.
15. The Applicant acting within the legal term submitted a request for revision to the Supreme Court, due to substantial violations of the provisions of the contested procedure and erroneous application of the substantive law.
16. On 10 September 2018, the Supreme Court by Decision Rev.276/2018 rejected as unfounded the request for revision submitted by the Applicant and confirmed the Decisions of the lower instance courts as correct.

Applicant's allegations

17. The Applicant alleges that the decisions of the regular courts violated his constitutional right to judicial protection of rights for the fact that: *"... he was denied the right of access to justice, for the fact that after his acquittal of the charge by the Judgment of the Supreme Court of Kosovo, AP-KZ.No.221 / 2011 of 06 December 2011, there was created a new factual situation and there ceased to exist the reasons for which the complainant was imposed the measure of dismissal from work, and thus without his fault he has not been able to factually and legally attack the acts by which he was dismissed from work"*.
18. Furthermore, the Applicant based on the foregoing alleges also the violation of: *"... basic human rights, specifically the protected right provided for in Article 6 of the European Convention on Human Rights and Article 31 of the Constitution of the Republic of Kosovo, within which the right to a fair trial and equality of the parties to the proceedings, and the right under Article 54*

of the Constitution of the Republic of Kosovo to Judicial Protection of Rights, of the injured parties has been violated.”

19. Finally, the Applicant requests from the Court: “... to annul and declare unconstitutional the judicial decisions, specifically: 1. Decision of the Basic Court in Gjakova C.no.192/2012, of 22.07.2016 2. Decision of the Court of Appeals of Kosovo AC.no.3200/2016 of 11.04.2018, and 3. Decision of the Supreme Court of Kosovo Rev. no. 276/2018, of 11.04.2018. ”

Admissibility of the Referral

20. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
21. 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”.

[...]

22. The Court also refers to Articles: 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 47
[Individual Requests]

[...]

“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....”.

23. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; he has exhausted all the legal remedies available; he has specified the act of the public authority which he is challenging at the Court and further he has stated the rights and freedoms which he claims to have been violated by the challenged Decision, as well as he has submitted the Referral in timely manner, in accordance with Article 48 of the Law.

24. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral be not manifestly ill-founded. Specifically, Rule 39 (2) provides 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.”

25. The Court recalls that the Applicant alleges that the decisions of the regular courts violated the rights guaranteed by Articles 31 and 54 of the Constitution, as well as Article 6 of the Convention, because he was denied the right to access to justice and the right to judicial protection of rights, as a result of violation of employment rights.

26. In this respect, the Court notes that the Basic Court in Gjakova justified the dismissal of the Applicant's claim as out of time, as follows: *“... the decision of 21 March 2007 and the judgment acquitting the claimant of all the charges, the court found that the claim was filed after the legal deadline foreseen by the Law on Labour, Articles 78 and 79 of Law No.03/L-212, the decision was issued on 25.05.2007, whilst the claim was submitted to the court on 01.06.2012, respectively after 5 years, which means that the legal deadline for filing the claim has expired.”*

27. Further, the Court of Appeal, having assessed the Applicant's allegations raised in the appeal on the issues of the deadline of the claim, argued that: *“The decisions of the Respondent according to which the Claimant remained out of employment relationship have become final since 2007. By this latest claim, filed on 1.6.2012, he has challenged and sought the annulment of the Respondent's Letter of Distribution DPKP- 01/555/2012, of 24.5.2012, issued by the Director of the Kosovo Police (Sh.M.), which does not even have a “decision” character, but which is a usual notification whereby the claimant is informed, once again, that his case is a concluded case, and that there is no legal possibility for him to be reinstated in his job position. By challenging “respondent's distribution letters”, the claimant - could not artificially create new legal deadlines to seek judicial protection of his employment rights, which relates to respondent's decisions dating from 2007, which now cannot*

even be considered as all the statutory limitations for this have expired, both according to the old laws as well as according to the new laws, therefore, the first instance court acted correctly when dismissing the claimant's claim as out of time(belated), therefore his appeal claims result to be entirely unfounded and the challenged decision is upheld."

28. Lastly, the Applicant filed a request for revision and the Supreme Court responded to his allegations relating to the time limits with the following reasoning: *"In this legal matter it is established that the employment relationship of the claimant was terminated by the decision of the Director of Human Resources Ref. no KPS/DP/AP/4024/D of 23.5.2007 which was received by the claimant on 25.5.2007, which is a final decision of the employment body. The claimant upon receipt of this decision does not initiate any proceedings before the Independent Oversight Board nor before the competent court, instead he filed the claim with the first instance court on 1.6.2012 after having received the judgment acquitting him of criminal responsibility, respectively after expiry of 5 years and on this basis the lower instance courts held that the claim was filed after the expiry of the statutory limitations set out in the above provisions, so the lower instance courts have acted correctly when dismissing the claim as out of time(belated). [...]"*.
29. On the basis of the case file, the Court notes that the regular courts dismissed the Applicant's claim for procedural reasons, having found that the admissibility criteria for a merited review had not been met, because the claim had been filed outside the time limit provided by laws in force.
30. The Court in this case considers that the Applicant's allegations, in fact, relate to how the regular courts in his case interpreted the relevant provisions of the procedural law, therefore, the Court considers that the Applicant's allegations in fact raise legal issues that fall within the scope of regular courts and not of the Constitutional Court.
31. The Court reiterates that it is not its duty to deal with errors of fact or law allegedly made by regular courts when assessing evidence or application of law (*legality*), unless and insofar that they may have violated the fundamental rights and freedoms protected by the Constitution (*constitutionality*).). It may not itself assess the law which has led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of "fourth instance", which would result in exceeding the limits set by its jurisdiction.
32. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see, the ECtHR case *Perlala v. Greece*, paragraph 25 and *Khan v. The United Kingdom*, paragraph 34, and see, also cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011; and KI56 / 17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 41).
33. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the

Constitutional Court cannot act as a “court of fourth instance” (see, *mutatis mutandis*, Resolution on Inadmissibility of the Constitutional Court, of 5 April 2012, case KI86/11, Applicant *Milaim Berisha*).

34. In this regard, the Court considers that the Applicant has had sufficient opportunity to present before the regular courts all the allegations of a violation of his rights. Furthermore, the Court considers that his arguments have been heard in a regular manner and have been properly examined by the regular courts. The Court considers that the decisions of the regular courts are reasoned and that the proceedings, in their entirety, were not in any way unfair or arbitrary (see the ECtHR case *Shub v Lithuania*, no. 17064/06, Judgment of 30 June 2009).
35. In view of what is stated above, the Court notes that the Applicant simply does not agree with the outcome of the proceedings before the regular courts. However, his dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself raise an argumentative allegation for a violation of constitutional rights (see, *mutatis mutandis*, *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21, ECtHR Judgment of 26 July. 2005; see Resolution on Inadmissibility of the Constitutional Court of 28 May 2012, in Case KI25/11, Applicant *Shaban Gojnovci*, paragraph 28; see also the Case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).
36. In conclusion, the Court considers that the Referral is manifestly ill-founded on constitutional grounds, as the Applicant does not sufficiently prove and substantiate his allegation of a violation of the rights guaranteed by the Constitution and the Convention.
37. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional grounds, and pursuant to Rule 39(2) of the Rules of Procedure, must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 39 (2) and 59 (b) of the Rules of Procedure, on 25 September 2019, unanimously

DECIDES

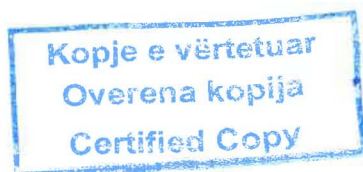
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



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