



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

Prishtina, 21 October 2019
Ref. no.:RK 1451/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI69/18

Applicant

N.T.SH „Dilloni Benz“

**Request for constitutional review of Decision PN – II – 10/2017 of the
Supreme Court of Kosovo of 13 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 N.T.SH „Dilloni Benz“ based in the village Miradi e Epërme, municipality of Fushë Kosovë (hereinafter: the Applicant), which is represented by responsible person Fadil Berjani from Fushë Kosovë.

Challenged decision

2. The Applicant challenges Decision PN – II – 10/2017 of the Supreme Court of Kosovo of 13 October 2017.
3. The challenged decision was served on the Applicant on 23 October 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the 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).
6. 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 (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 Constitutional Court

7. On 11 May 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 18 May 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 30 May 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
10. On 16 June 2018, the mandate of judges: Almiro Rodrigues and Snezhana Botusharova was terminated. On 26 June 2018, the mandate of judges Altay Suroy and Ivan Čukalović was terminated.
11. 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.
12. On 29 November 2018, the Court requested the Applicant to complete the Referral and submit the completed Referral Form. On the same date, the Court

notified the Basic Court about the registration of the Referral and requested the latter to submit to the Court a copy of the acknowledgment of receipt of Judgment Ka. No. 342/2017 of the Court of Appeals by the Applicant.

13. On 7 December 2018, the Basic Court submitted the requested document.
14. On 13 December 2018, the Applicant submitted the completed Referral Form to the Court.
15. On 17 December 2018, the President of the Court, following the end of the mandate of certain judges from the composition of the panel, rendered the decision on the appointment of the new Review Panel and appointed Judges: Arta Rama-Hajrizi (Presiding), Radomir Laban and Remzije Istrefi-Peci.
16. On 18 December 2018, the Court requested the Basic Court to submit to the Court a copy of the acknowledgment of receipt of Decision PN - II - 10/2017 of the Supreme Court of Kosovo by the Applicant.
17. On 20 December 2018 the Basic Court submitted the requested document.
18. On 25 September 2019, the Review Panel considered the Report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

19. On 18 July 2016, the Market Inspectorate of the Ministry of Trade and Industry (hereinafter: Competent Inspection Service) carried out an analysis of the oil products offered at the Applicant's premises. After analysis of the samples, it was found that the oil products on offer did not meet the prescribed standards.
20. On 1 August 2016, the competent inspection service filed a request with the Department for Minor Offences of the Basic Court in Prishtina against the Applicant due to irregular quality of the oil products on offer.
21. On 20 March 2017, the Department for Minor Offences of the Basic Court in Prishtina rendered Judgment No. reg. 47453/16, declaring the Applicant liable for an offense regarding the irregular quality of the oil products on offer and was accordingly fined.
22. On 31 March 2017, the Applicant filed appeal with the Court of Appeals against the Judgment of the Department for Minor Offences of the Basic Court in Prishtina of 20 March 2017, *"because the judgment contains essential violations of the rules of proceedings and substantive violations are basis for annulment of the judgment"*.
23. On 5 May 2017, the Court of Appeals by Judgment Ka. No. 342/2017 rejected, as ungrounded, the Applicant's appeal and upheld in entirety the Judgment of the Basic Court.

24. On an unspecified date, the Applicant submitted to the Department for Minor Offences of the Basic Court in Prishtina a request for reopening of the proceedings in case No. reg. 47453/16.
25. On 4 July 2017, the Department for Minor Offences of the Basic Court in Prishtina, by Decision K. no. 47453/16 rejected the Applicant's request for reopening of the proceedings.
26. On 30 July 2017, the Applicant filed appeal with the Court of Appeals against the Judgment of the Department for Minor Offences of the Basic Court in Prishtina of 4 July 2017.
27. On 15 August 2017, the Court of Appeals by Judgment Ka. No. 589/2017 rejected as ungrounded the Applicant's appeal and upheld in entirety the Judgment of the Basic Court.
28. On an unspecified date, the Applicant, against the judgment of the Court of Appeals, submitted to the Supreme Court a request for revision, *"on the grounds of essential violations of the rules of procedure and erroneous application of the law - substantive law, with the proposal that the Supreme Court of Kosovo, by approving the revision, modifies the first instance judgment or annuls both judgments and remands the matter to the first instance court for retrial, but to consider the case by another judge."*
29. On 13 October 2017, the Supreme Court by Decision PN – II – 10/2017 dismissed as inadmissible the Applicant's revision on the grounds of:

"In accordance with the provisions of the Law No. 05/L-087 on Minor Offences which entered into force in January 2017, in Chapter XXVI (Articles 146-149), as extraordinary legal remedies, are stipulated the reopening of proceedings and the request for protection of legality. The defendant exercised his legal right to file a request for reopening of the proceedings (and the court instances decided on this request). The defendant after using this extraordinary legal remedy, which, in accordance with the law and the legal provisions (as stated above), is not foreseen at all in the Law on Minor Offences."

Applicant's allegations

30. The Applicant alleges a violation of the right to *fair and impartial trial and the right to legal remedy*.
31. The Applicant further states that: *"the decisions (judgments and decisions) of the courts of all three instances contain a violation of constitutionality [...], because throughout the trial, from the investigation to the end, the courts supported the state institution - the Ministry of Trade and Industry and the SOE "Euro - Inspect", blindly giving their faith to their inspection reports and without taking into account at all the appealing allegations and evidence submitted by the Applicant, and thus unilaterally and in a consistent and uniform manner decided on the decisions of each other - without removing a single comma from their content."*

32. In fact, the Applicant considers that, *“in the present case, the Applicant submitted the revision, which the third instance characterizes as inadmissible, and potentially, even if it were inadmissible, the Applicant should be informed, as a legal laic, about his right to legal remedies, namely how to act and what to do next.”*
33. Finally, the Applicant requests the Court to, *“ANNUL as inconsistent with Articles 31 and 32 of the Constitution of the Republic of Kosovo, Decision PN - II - 10/2017 of the Supreme Court of Kosovo, of 13.10.2017 and judgments of the Court of Appeals of Kosovo, Ka. No. 342/2017 of 05.05.2017 as well as Judgment of the Basic Court in Prishtina with No. reg. 47453/16 of 20.03.2017”.*

Admissibility of the Referral

34. The Court first examines whether the Applicant has fulfilled all admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
35. In this respect, the Court refers to Articles 21. 4 and 113 .7 of the Constitution, which establish:

Article 21

“[...]

4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

[...]”

Article 113

„(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.“

36. The Court further refers to Article 48 of the Law, which foresees:

„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.”

37. Regarding the fulfillment of these requirements, the Court finds that the Applicant is authorized party who challenges an act of a public authority, namely Decision PN–II–10/2017 of the Supreme Court. The Applicant has also specified the rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law.
38. However, the Court further refers to Article 49 [Deadlines] of the Law, which stipulates:

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. [...].

39. The Court takes into account Rule 39 (1) (c) of the Rules of Procedure, which establishes:

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 [...].“

40. In this case, the Court notes that the challenged decision (Decision PN-II-10/2017) of the Supreme Court was served on the Applicant on 23 October 2017, while the constitutional referral was submitted on 11 May 2018.
41. In this regard, the Court notes that the constitutional referral was filed out of the legal deadline of 4 (four) months, which is prescribed in Article 49 of the Law and further established in Rule 39 (1) (c) of the Rules of Procedure.
42. 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: case *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39, and *mutatis mutandis*, see: case No. KI140/13, Applicant: *Ramadan Cakiqi*, Resolution on Inadmissibility of 3 March 2014).
43. Based on the foregoing, the Applicant's Referral was not submitted in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.
44. The Court finds that the Applicant's Referral was filed out of time and it is to be declared inadmissible, because it was not filed in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

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

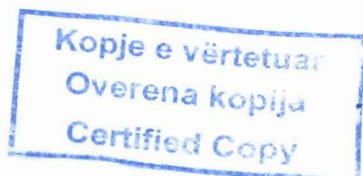
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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