



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

Prishtina, on 26 May 2020  
Ref.No.:RK 1570/20

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KIo6/20**

Applicant

**Migjen Selmani**

**Constitutional review of  
Judgment ARJ-UZVP.No. 95/2019 of the Supreme Court of Kosovo, of 29  
July 2019**

### **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 Migjen Selmani, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The challenged decision is Judgment ARJ-UZVP. No. 95/2019 of the Supreme Court of Kosovo, of 29 July 2019.
3. The Applicant was served with the abovementioned decision on 13 September 2019.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights protected by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial), of the European Convention on Human Rights (hereinafter: the ECHR).

## **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] and 47 [Individual Requests] 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).

## **Proceedings before the Constitutional Court**

6. On 14 January 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 January 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and on 17 January 2020 appointed the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljati and Safet Hoxha (members).
8. On 24 January 2020, the Court notified the Applicant about the registration of the Referral. On the same date, the Court also notified the Supreme Court about the registration of the Referral and sent a copy thereof, and notified the Basic Court in Prishtina about the registration of the Referral, requesting it to submit to the Court the acknowledgment of receipt proving the date when the Applicant was served with the challenged decision.
9. On 28 January 2020, the Basic Court in Prishtina submitted the required document to the Court.
10. On 13 May 2020, 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

11. It appears from the case file that since 26 February 2010, the Applicant was employed as an Anti-Corruption Expert in the Special Anti-Corruption Department, within the Special Prosecution of the Republic of Kosovo.
12. On 6 January 2011, the Government of the Republic of Kosovo, by Decision No. 02/151, decided to raise salaries for civil servants, in the amount of 30% of the basic salary.
13. On an unspecified date, the Applicant together with several other employees, who were in the same position and in the same institution with the Applicant, have addressed the Ministry of Public Administration requesting their inclusion in the salary system, namely increase of the salary in an amount of 30% (based on the Decision of the Government of the Republic of Kosovo No. 02/151, of 6 January 2011).
14. On 31 August 2011, the Ministry of Public Administration notified the Applicant that the inclusion in the payroll system would be made only after the Special Prosecution of Kosovo presents a written evidence of sufficient financial resources for such a thing.
15. On 8 February 2013, the Applicant, together with other employees, addressed the Special Prosecution of the Republic of Kosovo, with a request to implement Decision No. 02/151, of the Government of the Republic of Kosovo, of 6 January 2011.
16. On 4 March 2013, the Kosovo Prosecutorial Council, by Decision KPC/No. 55/2013, rejected their request on the grounds that the latter could not exercise the right to a salary increase as they are not explicitly included in Decision No. 02/151, of the Government of the Republic of Kosovo, of 6 January 2011.
17. On 22 March 2013, the Applicant addressed the Independent Oversight Board for the Civil Service of the Republic of Kosovo (hereinafter: the IOBCSK), requesting the annulment of Decision KPC/No. 55/2013 of the Kosovo Prosecutorial Council, of 4 March 2013.
18. On 22 April 2013, the IOBCSK, by Decision No. 1071/2013, rejected the request of the Applicant with the reasoning that the Applicant has a fixed salary, outside the salary system of civil servants of Kosovo, therefore, he cannot enjoy the 30% increase as determined by Decision No. 02/151, of the Government of the Republic of Kosovo, of 6 January 2011.
19. On 3 May 2013, the Applicant filed a claim with the Basic Court in Prishtina, challenging the legality of Decision No. 1071/2013 of the IOBCSK of 22 April 2013.
20. On 7 July 2015, the Basic Court in Prishtina, by Judgment A. No. 612/2010, approved as grounded the statement of claim of the Applicant by annulling Decision No. 1071/2013, of the IOBCSK, of 22 April 2013 and remanding the case for retrial. The Judgment of the Basic Court, *inter alia*, reads that "*the challenged*

*decision turns out to contain such flaws due to which its legality cannot be examined. The flaws lie in the essential violation of the provisions of the Law on Administrative Procedure [...] The challenged decision is legally unclear and contradictory to itself and its reasoning”.*

21. On 1 September 2015, the IOBCSK, deciding in retrial, by Decision A/02/388/2015, rejected as inadmissible the complaint of the Applicant, arguing that the Applicant has not exhausted the legal remedies, as he did not file an appeal against the Decision of the KPC No. 55/2013, with the body where he is employed, namely with the Complaints Commission of the Kosovo Prosecutorial Council.
22. On 30 September 2015, the Applicant filed an appeal with the Basic Court in Prishtina against Decision A/02/388/2015 of the IOBCSK, of 1 September 2015, considering that the abovementioned Decision contains numerous flaws, it is unclear and moreover it is contradictory to the reasoning of the decision of the IOBCSK of 2013.
23. On 14 November 2017, the Basic Court in Prishtina, by Judgment A. No. 1669/15, rejected the Applicant's appeal as ungrounded. In this Judgment, among other things, it is emphasized that since the internal sources of the appeal have not been exhausted by the Applicant, the request is premature. This Judgment states: [...] *The court also assessed the claimant's allegations both in the claim and in the statements of the hearing, but as such it could not approve them as grounded in this administrative case as it did not consider them with influence for another decision-making”.*
24. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against Judgment A. No. 1669/15 of the Basic Court in Prishtina, claiming erroneous determination of factual situation, erroneous application of substantive law and essential violation of the procedural provisions.
25. On 18 March 2019, the Court of Appeals, by Judgment A.A. No. 30/2018, rejected as ungrounded the appeal, while it upheld Judgment A. No. 1669/15 of the Basic Court in Prishtina. In its Judgment, the Court of Appeals stated that it considered the legal position of the first instance court to be regular and based on law and that the factual situation was correctly determined.
26. On an unspecified date, the Applicant submitted to the Supreme Court a request for an extraordinary review of the court decision, alleging erroneous application of substantive law and essential violation of procedural provisions.
27. On 29 July 2019, the Supreme Court of Kosovo, by Judgment ARJ-UZVP. No. 95/2019, rejected as ungrounded the Applicant's request for extraordinary review of the court decision, considering that the Applicant's allegations were ungrounded because they do not have influence on different determination of factual situation, than what the court of second instance determined.

## **Applicant's allegations**

28. The Court recalls that the Applicant alleges that the challenged decision violated his rights protected by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, in conjunction with Article 6 of the ECHR.
29. The Applicant, in essence, alleges that the regular courts have made erroneous and incomplete determination of factual situation. The Applicant did not further elaborate on how the violation of the rights protected by the Constitution occurred, which he only mentioned in his Referral.
30. Finally, the Applicant requests the Court to annul the challenged decision, as well as other decisions related to the challenged decision, and requested that the case be remanded for retrial.

## **Admissibility of the Referral**

31. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure have been met.
32. In this respect, the Court initially 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.”*

33. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and Article 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...”*

34. The Court further refers to Rule 30 [Calculation of Time Periods] and 39 [Admissibility Criteria], of the Rules of Procedure:

Rule 30  
[Calculation of Time Periods]

*A time period prescribed by the Constitution, the Law or these Rules shall be calculated as follows:*

*[...]*

*(3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred.*

*(6) When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day.*

Rule 39  
[Admissibility Criteria]

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

*[...]*

*(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant.*

35. At the outset, the Court refers to the date of service of the final decision challenged by the Applicant, and the date of the submission of the Referral to the Court, in order to assess whether the Applicant has submitted the Referral within a specified period of four (4) months.
36. In this regard, the Court notes that the final decision in the case of the Applicant is Judgment ARJ-UZVP. No. 95/2019 of the Supreme Court of Kosovo of 29 July 2019.



37. The Applicant, in his Referral, states that he was served with the challenged decision on 16 September 2019, but did not prove this fact by the acknowledgment of receipt.
38. Based on the acknowledgment of receipt, which the Basic Court in Prishtina submitted to the Court in its response of 28 January 2020, it is noted that the Applicant was served with the challenged decision on 13 September 2019.
39. Therefore, the Court finds that the Applicant was served with the challenged decision on 13 September 2019, whereas he submitted the Referral to the Court on 14 January 2020 (Tuesday), which means that the Applicant's Referral was served out of the determined legal time limit.
40. Referring also to the case law of the European Court of Human Rights (ECtHR), the Court reiterates that the objective of the 4 (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 cases of the Court: KI140/13, Applicant, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24; KI49/18, Applicant *Ilmi Sopu*, Resolution on Inadmissibility of 22 November 2018, paragraph 55; KI109/19, Applicant *Mehmet Qerimi*, Resolution on Inadmissibility of 26 February 2020, paragraph 37; see also cases of the ECtHR: *Olivier Gaillard v. France*, no. 47337/99, of 11 July 2000; *Franz Hofstädter v. Austria*, no. 25407/94, 12 September 2000).
41. This deadline also enables the potential 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 cases of the Court, KI49/18, Applicant *Ilmi Sopu*, Resolution on Inadmissibility of 22 November 2018, paragraph 56; case KI109/19, Applicant *Mehmet Qerimi*, Resolution on Inadmissibility of 26 February 2020, paragraph 38). At the same time, this facilitates the determination of the facts in this case, as over time, any fair consideration of the issues raised becomes problematic (see ECtHR decision, *Nee v. Ireland*, No. 52787/99, of 30 January 2003).
42. In line with the case law of the ECtHR, the Court reiterates that the temporal limit of supervision carried out by the Court signals to both individuals and state authorities the period beyond which such supervision is no longer possible (see, *mutatis mutandis*, ECtHR decisions: *Walker v. United Kingdom*, no. 34979/97 of 25 January 2000, *Sabri Güneş v. Turkey*, of 29 June 2012, paragraph 40).
43. 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 Rule 39 (1) (c) of the Rules of Procedure, on 13 May 2020, 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**

Bekim Sejdiu

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*