



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

Prishtina, on 12 October 2020
Ref.No.:RK 1627/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI26/20

Applicant

Fatmir Kahrirani

**Constitutional review of Decision Rev. No. 234/2019 of the Supreme
Court of Kosovo of 22 August 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 is submitted by Fatmir Kahrirani from the Municipality of Peja, represented by Lulzim Balaj, a lawyer from Peja (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Rev. No. 234/2019] of 22 August 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Decision [Ac. No. 135/17] of 23 April 2019 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Decision [C. No. 723/16] of 8 December 2016 of the Basic Court in Peja (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Decision of the Supreme Court, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] 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) and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

4. 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 Court

5. On 3 February 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 February 2020, the Applicant submitted the power of attorney on the basis of which he is represented by Lulzim Balaj, a lawyer from Peja.
7. On 11 February 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi Peci and Nexhmi Rexhepi.
8. On 12 February 2020, the Court notified the Applicant's representative about the registration of the Referral. The Court also sent a copy of the Referral to the Supreme Court.
9. On 30 September 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously, recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 7 August 2012, by the Decision [No. 022/12], the Applicant was suspended (with payment) from work in the Detention Center in Peja.
11. On 5 October 2012, the Disciplinary Commission of the Correctional Service by the Decision [No. 31/KD] terminated the employment relationship of the Applicant and initiated his case in court with the allegation that *“he has committed a serious disciplinary violation that has smuggled with prohibited items in the space of the Detention Center, namely in the environment of the pre-detainees”*.
12. On 19 December 2012, the Municipal Prosecutor’s Office in Peja filed an indictment against the Applicant.
13. On 26 May 2015, the Basic Court acquitted the Applicant of charges by Judgment [P. No. 68/2015].
14. On 13 July 2015, the Court of Appeals by the Judgment [PAKR. No. 27/2016] rejected the prosecution’s appeal and upheld the Judgment of the Basic Court.
15. On 5 August 2016, the Applicant, after being acquitted of charges, filed a request with the Kosovo Correctional Service for reinstatement to work.
16. On 25 October 2016, the Applicant filed a lawsuit with the Basic Court, against the Ministry of Justice, Correctional Service of Kosovo - Detention Center in Peja.
17. On 8 December 2016, the Basic Court by Decision [C. No. 723/16] dismissed the Applicant’s lawsuit as inadmissible. The Basic Court in its Decision, *inter alia*, stated that (i) in assessing the claims of the parties to the dispute and regarding the exhaustion of domestic legal remedies and the time limit of the lawsuit, the court referred to the case file and found that the Applicant was initially suspended from work with payment by the Decision [No. 022] of 7 August 2012, then by the Decision of 8 October 2012 the Applicant’s employment relationship was terminated, which decision the claimant received on 11 October 2012, and has not challenged it, while the lawsuit filed on 21 January 2016, these circumstances confirmed and not challenged by the claimant for which the court concludes that the lawsuit is inadmissible; (ii) based on Article 78 paragraph 1 and 2 of the Law on Labour where it is foreseen that: an employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated, paragraph 2. the employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted, paragraph 3. the decision from paragraph 2 of this Article shall be delivered in a written form to the employee within the term of eight (8) days, while article 79 provides that: every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court; and (iii) in the circumstances of the case and taking into account that the

Applicant has not exhausted the domestic remedies and that the lawsuit was filed after the allowed legal deadline, the Basic Court based on Articles 78 and 79 of the Law on Labour decided to dismiss it as inadmissible.

18. On 21 December 2016, against the Decision of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging essential violations of the provisions of the contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of the substantive provisions, with the proposal to approve the appeal, to annul the challenged Decision and to remand its case for reconsideration.
19. On 23 April 2019, the Court of Appeals by the Decision [Ac. No. 135/17] rejected as ungrounded the Applicant's appeal, upholding the abovementioned Decision of the Basic Court.
20. On 31 May 2019, the Applicant against the Decision of the Court of Appeals filed a revision with the Supreme Court, alleging essential violations of the provisions of the contested procedure and erroneous application of the substantive law, with the proposal to annul 2 (two) lower court decisions and remand the case for retrial.
21. On 22 August 2019, the Supreme Court by the Decision [Rev. No. 234/2019] rejected as ungrounded the revision submitted by the Applicant, and upheld the Decision [Ac. No. 135/17] of 23 April 2019 of the Court of Appeals in conjunction with the Decision [C. No. 723/16] of 8 December 2016 of the Basic Court.

Applicant's allegations

22. The Applicant challenges the Decision [Rev. No. 234/2019] of 22 August 2019 of the Supreme Court, alleging that it was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law] of 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, as well as Article 49 [Right to Work and Exercise Profession] of the Constitution.
23. The Applicant challenges the findings of the regular courts before the Court, claiming that the latter are contrary to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, because according to the allegation, the regular courts did not take into account the circumstances that he did not file a lawsuit because he waited for the completion of the criminal case.
24. With regard to the alleged violations of the other abovementioned Articles of the Constitution and the ECHR, the Applicant, in addition to mentioning these Articles, has not substantiated in any way how and why his rights protected by the Constitution and the ECHR have been violated.
25. Finally, the Applicant requests the Court "*the reinstatement to his working place and compensation of personal income*".

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

[...]

Chapter II

Fundamental Rights and Freedoms

[...]

Article 31

[Right to Fair and Impartial Trial]

Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

European Convention on Human Rights

Section I

Rights and Freedoms

Article 6

(Right to a fair trial)

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

Law on Labour No. 03/L-212

Article 78

(Protection of Employees' Rights)

- 1. An employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated.*
- 2. Employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted.*
- 3. The decision from paragraph 2 of this Article shall be delivered in a written form to the employee within the term of eight (8) day.*

Article 79

(Protection of an Employee by the Court)

Every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court.

Admissibility of the Referral

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
27. 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”.

28. The Court also examines whether the Applicant has fulfilled the admissibility requirements as provided by Law. In this regard, the Court first 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...”

29. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Decision [Rev. No. 234/2019] of 22 August 2019 of the Supreme Court, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms he claims to have been violated, in accordance with Article 48 of the Law and has submitted the Referral within the deadline set out in Article 49 of the Law.
30. However, in addition, the Court examines whether the Applicant has fulfilled the other admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria on the basis of which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

“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”.

31. The Court in this respect and initially recalls that the Applicant, challenged before the regular courts the Decision on termination of the employment, claiming its unlawfulness, because in essence, according to him, he was acquitted by the Court of the offense due to which his employment relationship was terminated.
32. The Applicant's case was reviewed through three (3) court decisions, initially decided by the Basic Court, according to which, the Applicant's lawsuit was inadmissible because the Applicant received the decision on termination of the employment relationship on 11 October 2012 and he did not challenge it, while he filed the lawsuit with the court on 21 January 2016. The Court of Appeals and the Supreme Court assessed the Applicant's allegations and upheld the Decision of the Basic Court. The Applicant challenges the findings of the regular courts before the Court, alleging that they are contrary to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, because according to the allegation, the regular courts did not take into account the circumstances that he did not file a lawsuit because he awaited the completion of the criminal case.
33. With regard to this allegation, and as reflected in the part relating to the Applicant's allegations, beyond the allegation that the decisions of the regular courts are contrary to Articles 23, 24, 31 and 49 of the Constitution and Article 6 of the ECHR; the Applicant has not submitted before the Court any concrete arguments and/or justifications regarding the violations of his rights alleged by him.
34. In this regard, the Court recalls its case law according to which only the mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the

machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms. (See, in this context, the cases of the Court KIO2/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October 2019, paragraphs 30-31).

35. Such a position of the Court is based on the case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution. Based on this case law, and that already consolidated of the Court, the unreasoned allegations or complaints, which are not substantiated with arguments and evidence are declared inadmissible as manifestly ill-founded on constitutional basis. (See ECtHR Guide of 30 April 2019 on Admissibility Criteria; part I. Procedural Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unreasoned complaints: lack of evidence, paragraphs 280 to 283).
36. The Court also recalls that the same general allegations were also brought before the Supreme Court by the revision, and which emphasized this fact through its Decision [Rev. No. 234/2019] of 22 August 2019, stating as follows:

“In the revision of the claimant’s authorized representative only in general it is stated that the abovementioned decisions contain essential violation of the provisions of the contested procedure, without being specifically clarified what they are. The court found that the allegations in the revision regarding essential violations of the procedural provisions are unfounded. Furthermore, the revision only described the content of the legal norm under Article 182 point (n) of the LCP, without clarifying more specifically what are those procedural violations and on what they are based”.

37. Despite this finding, the Supreme Court in fact reasoned in detail the Applicant’s generalized allegations regarding the timeliness of his lawsuit. In this regard, the Supreme Court, by its Decision, *inter alia*, reasoned as follows:

“The revision alleges that the claimant’s lawsuit is timely, as the deadline for its filing begins after the criminal judgment becomes final and that in terms of Articles 530 and 533 of the Criminal Procedure Code the respondent must, among other things, recognize the claimant the right to the experience pension, etc. These allegations of revision were rejected as unfounded, due to the fact that, as found by the court of first and second instance, Articles 78 and 79 of the Law on Labor of Kosovo provide strict legal deadlines for the protection of employee’s rights in court, which deadlines are not challenged because a long time has passed as found in the decision of the court of first and second instance.

Moreover, the claimant against the decision of the disciplinary commission for termination of employment relationship has not appealed at all to the Ministry of Justice as advised in the same decision, and

therefore the claimant's lawsuit is not only out of time, it is also inadmissible as the claimant has not previously exhausted that he sought internal protection of his rights from the employment relationship, while he was obliged to do so since the decision of the disciplinary commission was not final because against it, according to the legal remedy of this decision, the claimant had the opportunity to appeal, within the meaning of Article 78.1 of the Law on Labor in the Ministry of Justice. After the expiration of the legal deadline of 8 days for filing an appeal against this decision, the same decision was rendered final because the claimant no longer appealed against it. For these reasons, the claimant's lawsuit that the claimant did not complain further cannot be accepted as grounded, convinced that the Ministry of Justice also had to confirm the decision of the disciplinary commission on termination of the employment relationship, considering that against it was initiated criminal proceedings. The claimant has no right to make such prejudices as long as he has not used the legal remedy of the complaint, therefore such excuses for not filing a complaint are considered inadmissible".

38. The Court in this context notes that the regular courts and specifically the Supreme Court found that the Applicant was late in filing a lawsuit, and in this case missed the legal deadlines provided by the legal provisions for filing a lawsuit.
39. As explained above, the Applicant does not bring any additional arguments or reasoning before the Court in support of his allegations of violation of his constitutional rights. Consequently, the Court, based on its Rules of Procedure, namely paragraph 2 of its Rule 39, must declare this Referral inadmissible as manifestly ill-founded on constitutional basis, because the Applicant does not prove or sufficiently substantiate his allegation.
40. The Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot in itself raise an arguable claim of violation of the right to fair and impartial trial. (See, case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, among other, KI56/17, Resolution of 18 December 2017, paragraph 42).
41. Therefore, in these circumstances, based on the above and taking into account the allegations raised by the Applicant and the facts presented by him, the Court also based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegation of violation of his fundamental rights and freedoms guaranteed by the Constitution and the ECHR.
42. Consequently, the Referral is manifestly ill-founded on constitutional basis, and is to be declared inadmissible in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 30 September 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

Safet Hoxha

Arta Rama-Hajrizi

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