



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

Prishtina, on 22 March 2021
Ref.No:RK1731/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI180/20

Applicant

Agim Stublla

**Constitutional review of Judgment [C.nr.753/15] of the Supreme Court of
Kosovo, of 28 February 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 Agim Stublla from Lluzhan village, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court in Prishtina (hereinafter: the Basic Court).
3. Based on the case files, the Applicant received the above mentioned Judgment of the Basic Court no later than 25 April 2017, the date on which he filed the relevant appeal with the Court of Appeals. Whereas, based on the copy of the acknowledgment of receipt, the Judgment [Ac.nr.2329/17] of 9 March 2020 of the Court of Appeals was received by the Applicant on 26 June 2020.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: 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) and 47 (Individual Requests) of the 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

6. On 26 November 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 30 November 2020, the President of the Court appointed Judge Gresa Caka-Nimani Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
8. On 4 December 2020, the Applicant (i) was notified of the registration of the Referral; and (ii) was requested by the Court to clarify the fundamental rights and freedoms he alleges to have been violated through the challenged act of the public authority and to submit the challenged decisions together with other decisions or documents relevant to his Referral.
9. On 15 December 2020, the Applicant submitted to the Court, *inter alia*, the following documents: (i) criminal report of 8 April 2019 filed with the Basic Prosecution in Prishtina (hereinafter: the Basic Prosecution) against the Kosovo Police colonel, namely R.B.; (ii) response from the Office of the Disciplinary Prosecutor of 20 December 2017; (iii) appeal [nr.C.nr.753/15] filed with the Court of Appeals against Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court; (iv) employment certificate of 25 November 2008, according to which the Applicant was employed in the Kosovo Police in the capacity of a Police Officer; (v) response of 10 October 2008 from the UNMIK International

Chief Prosecutor; and (vi) the Official Memorandum from the Regional Police Directorate regarding “*health condition*” of the Applicant.

10. On 14 January 2021, the Basic Court was notified of the registration of the Referral and was served with a copy.
11. On 21 January 2021, the Basic Court, inter alia, submitted the following documents: (i) Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court; (ii) Judgment [Ac.nr. 2329/17] of 9 March 2020 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals); and (iii) copy of the acknowledgment of receipt of Judgment [Ac.nr.2329 / 17] of 9 March 2020 of the Court of Appeals, indicating that the Applicant received this Judgment on 26 June 2020.
12. On 21 January 2021, via e-mail, the Applicant requested the Court to forward his Referral to person D.L., whom he alleges to be his lawyer, because he revoked the power of attorney from the previous lawyer, namely M.D.
13. On 18 February 2021, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

14. The Applicant is appearing before the Court for the third time. His first referral was registered under number KI84/10. Through this case, the Applicant had challenged the constitutionality of (i) Judgment [P.nr. 129/2009] of 23 February 2010 of the Municipal Court of Prishtina (hereinafter: the Municipal Court), whereby he was found guilty of the criminal offense of theft, as defined by Article 252 (Theft) of the Provisional Criminal Code of Kosovo (hereinafter: the PCKK); (ii) Decision [P.nr. 122/VDP/2010] of 19 November 2010 of the Kosovo Police, whereby the Applicant's employment was terminated; and (iii) Judgment [PKL.nr.69/2010] of 6 August 2010 of the Supreme Court, whereby the appeal of the Applicant against the above mentioned Judgment of the Municipal Court was dismissed. The Court declared Referral KI84/10 inadmissible for consideration in merits. Whereas, his second referral was registered under number KI74/12. The Court found that Referral KI74/12 contained new decisions, but that it was essentially the same as referral KI84/10, and consequently declared it inadmissible, reasoning that it had already rendered a decision for the case in question and that Referral KI74/12 does not provide a sufficient basis to render a new decision.
15. In the present case, based on the case files, it follows the Applicant was employed as a Police Officer in the Kosovo Police from 12 March 2001. On 27 January 2009, the Medical Service of the Kosovo Police addressed a letter to the Deputy Regional Director for Kosovo Police Administration, recommending that the Applicant “*be assigned to a job where the responsibility is smaller, where there is no need to carry a weapon, and preferably where communication with people is smaller*”. After he was found guilty of the criminal offense of theft, as defined by Article 252 of the PCKK, by Judgment [P.nr.129/2009] of 23 February 2010 of the Municipal Court, the General Directorate of Kosovo Police,

by Decision [P.nr.122/VDP/2010] of 19 November 2010, terminated the employment relationship of the Applicant.

16. On an unspecified date, the Applicant filed a claim with the Municipal Court, alleging that the termination of his employment with the Kosovo Police was terminated unlawfully.
17. On 1 October 2012, the Municipal Court, by Decision [C.nr.107/2009], rejected the lawsuit of the Applicant as inadmissible.
18. On an unspecified date, the Applicant filed a claim with the District Court in Prishtina against the above mentioned Decision of the Municipal Court.
19. On 6 March 2015, the Court of Appeals by Decision [CA.nr.4784/2012] annulled Decision [C.nr.107/2009] of 1 October 2012 of the Municipal Court and remanded the case for retrial.
20. On 28 February 2017, the Basic Court by Judgment [C.nr.753/15] rejected the claim of the Applicant as ungrounded. The Basic Court, *inter alia*, stated that (i) the decision for termination of the employment was issued in accordance with the law, namely paragraph 2.4 of Article 2 (Scope of Application) of the Administrative Instruction 15/2008 on Types of Major and Minor Disciplinary Violations in the Kosovo Police and item 1.4.1 of paragraph 1 of Article 70 (Termination of Employment Contract by the Employer) and Article 85 (Disciplinary Measures for the Violation of Labour Duties) of Law No. 03/L-212 on Labour; and (ii) the finding of the medical judicial expert that the Applicant “*is able to perform his duties in the Police*”, is not decisive to decide otherwise because the termination of employment is based on disciplinary violations established by the respondent, namely the Kosovo Police and not on the basis of the health condition of the Applicant.
21. On 25 April 2017, against the above mentioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging essential violations of procedural provisions, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, with the proposal to (i) modify the Judgment of the Basic Court and oblige the respondent, namely the Kosovo Police, to reinstate the Applicant “*to a job where carrying of a weapon is not required*”; and (ii) to compensate the material damage due to non-realization of personal income for the period May 2010 to June 2016 in the total amount of 32.890.09 Euros. The Applicant, through this appeal, among others things, had alleged that the Basic Court, erroneously and contrary to the evidence administered, has assessed that his employment was terminated due to a disciplinary violation, while the same evidence proves that it was terminated “*due to an unfair assessment of his mental state*”.
22. On 21 September 2017, the Applicant filed a submission with the Office of the Disciplinary Prosecutor, regarding the extension of court proceedings before the Court of Appeals regarding his appeal.
23. On 20 December 2017, the Office of the Disciplinary Prosecutor informed the Applicant that: (i) his appeal is under review before the Court of Appeals; (ii) on

20 June 2017, his case was assigned to Judge A.Z.; (iii) the respective delays were caused due to “*objective circumstances such as the workload of judges with a large number of cases, insufficient number of judges, etc. ...*”; and that, (iv) there is insufficient basis to open a disciplinary investigation under the circumstances of this case.

24. On 9 March 2020, the Court of Appeal by Judgment [Ac.nr.2329/2017] rejected the appeal of the Applicant as ungrounded, upholding Judgment [C.nr.753/2015] of 28 February 2017 of the Basic Court.

Applicant’s allegations

25. The Applicant alleges that Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court was rendered in violation of his fundamental rights and freedoms guaranteed by the Constitution. The Applicant does not accurately clarify which fundamental rights and freedoms he alleges to have been violated through an act of public authority he challenges before the Court.
26. Before the Court, the Applicant, alleges that (i) “*he is threatened by liquidation*”; (ii) “*is politically discriminated against*”; (iii) “*they do not allow him to work anywhere*” because he was “*a state official and S.P.S.*”; (iv) “*was forcibly sent for psychiatric treatment by person R.B., a colonel in the Kosovo Police, and as a result his mental health was damaged*”; and (v) has been “*discriminated against by the courts and the prosecution and wants to be reinstated to his job in capacity of a police officer*”.
27. Finally, the Applicant requests from the Court: “*Please verify the case in its entirety, we are dealing with a criminal enterprise or terrorist group [...] against my health and personality.*”

Admissibility of the Referral

28. 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.
29. In this regard, the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:
- “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.”*
30. The Court also refers to the admissibility criteria, as further specified in the 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[...].”

31. With regard to the fulfillment of these requirements, the Court initially states that the Applicant is an authorized party, who challenges an act of a public authority, namely the Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court. However, as clarified in the proceedings before the Court, after the Basic Court was notified of the registration of the case, the latter submitted to the Court the Judgment [Ac.nr. 2329/17] of 9 March 2020 of the Court of Appeals issued after the appeal of the Applicant against the Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court.
32. Based on the case files, it follows that (i) Judgment [C.nr.753/15] of the Basic Court was issued on 28 February 2017; (ii) appeal against this Judgment was filed with the Court of Appeals on 25 April 2017; (iii) Judgment [Ac.nr. 2329/17] of the Court of Appeals was issued on 9 March 2020 which the Applicant received on 26 June 2020; whereas (iv) the Applicant submitted his Referral to the Court on 26 November 2020.
33. In the context of the above mentioned data, the Court must first assess whether the Referral was submitted to the Court within a period of four (4) months, as set forth in Article 49 of the Law. In this regard, the Court also states that beyond this requirement set out in the Law regarding the submission of referrals before the Court in accordance with the procedure established in paragraph 7 of Article 113 of the Constitution, namely individual referrals, is also point (c) of paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure, which stipulates the following:

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, and
[...].”*

34. In the circumstances of the present case, the Court recalls that the Applicant challenges the Judgment [C.nr.753/15] of 28 February 2017 of the Basic Court. However, even before submitting his Referral to the Court, based on the data submitted to the Court by the Basic Court, on 26 June 2020, the Applicant had also received the Judgment of the Court of Appeals, namely Judgment [Ac.nr.2329/2017] of 9 March 2020, issued following his appeal against the above mentioned Judgment of the Basic Court. The Referral of the Applicant was submitted to the Court on 26 November 2020, namely (i) more than three (3) years after the issuance of the Judgment of the Basic Court; and (ii) five (5) months after receiving the Judgment of the Court of Appeals, and consequently out of time of the four (4) months period specified in the above mentioned provisions of the Law and the Rules of Procedure. Under such circumstances, the Court must conclude the Referral of the Applicant was submitted to the Court outside the legal deadlines and consequently must be declared inadmissible.
35. The Court recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 39 (1) (c) is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging. (See, *inter alia*, the case of the ECtHR *Sabri Gunes v. Turkey*, Judgment of 29 June 2012, paragraph 39 and the references used therein; and see, *inter alia*, the case of Court KI107/20, Applicant *Ismail Guri*, Resolution on Inadmissibility of 3 December 2020, paragraph 41 and references used therein).
36. In conclusion, due to the reasons elaborated above, the Court finds that the Referral was not filed within the legal time limit set by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, consequently, the Court cannot not review the merits of the case, namely whether constitutional rights of the Applicant have been violated by the challenged Judgment.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 and 113.7 of the Constitution, Articles 20 and 49 of the Law, and in accordance with Rule 39 (1) (c) and 59 (2) of the Rules of Procedure, on 18 February 2021, 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

Gresa Caka-Nimani

Arta Rama-Hajrizi

**Kopje e vërtetuar
Overena kopija
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