



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 13 August 2021
Ref. No.:RK 1830/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI52/21

Applicant

Bedrije Rama

**Constitutional review of Judgment E.Rev.no.382/2019 of the Supreme
Court of the Republic of Kosovo, of 21 October 2020**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Bedrije Rama from the Municipality of Podujevë (hereinafter: the Applicant), who is represented by Rrahman Rama from Podujevë.

Challenged decision

2. The Applicant challenges the Judgment [E. Rev. no. 382/2019] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 21 October 2020.
3. The challenged Judgment was received by the Applicant on 10 December 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's fundamental rights and freedoms guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the 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 Constitutional Court

6. On 12 March 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 22 March 2021, the President of the Court Arta Rama Hajrizi appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu Krasniqi (presiding), Bajram Ljatifi and Radomir Laban (members).
8. On 30 March 2020, the Court (i) notified the Applicant about the registration of the Referral, and (ii) notified the Supreme Court about the challenging of the Judgment [E. Rev. no. 382/2019] of 21 October 2020 and provided a copy of the Referral to it.
9. On 19 April 2021, the Court notified the Basic Court in Prishtina, Branch in Podujevë (hereinafter: the Basic Court), about the registration of the Referral and requested from it to inform the Court about the date on which the Applicant had received the challenged Judgment of the Supreme Court.
10. On 17 May 2021, the Basic Court submitted to the Court the confirmation of receipt indicating that the Applicant had received the challenged Judgment on 10 December 2020.
11. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani

assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.

12. On 28 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously/by majority vote made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. Initially, the Court would like to draw attention that the Applicant was a party to the Court case KI41/16 (Resolution on Inadmissibility of 1 June 2017) in which case the subject matter of the Referral was the constitutional review of Decision [CML .no.5/2015] of the Supreme Court of Kosovo, of 17 December 2015.

Relevant facts of the case KI 46/16

14. On the basis of the case file, it results that in this case the Applicant had pursued two different types of proceedings, namely (i) the Administrative procedure, which had resulted in Judgment [A. no. 1041/2008] of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 31 October 2011, and (ii) the Enforcement Procedure, which had resulted in the Decision [CML. no. 5/2015] of the Supreme Court, of 17 December 2015. In relation to the Applicant's allegations and the issues addressed in the above proceedings, the Court has decided on them by the Resolution on Inadmissibility in case KI41/16, where the Referral has been declared as manifestly ill founded on constitutional basis.
15. Based on the case file, it results that on 8 July 2004, the Applicant had entered into a contract with the interested party - Municipality of Podujevë, for temporary use of socially owned construction land. Article 4 of this contract provided that the contracting parties have agreed to terminate the contract when necessary in order for the building and location to be used for other needs in accordance with the urban planning, or another decision that replaces this plan.
16. On 6 October 2005, the Council of Directors of the Municipality of Podujevë took a decision [Decision no. 02-1/240-02] according to which the Applicant was obliged to remove the building due to road works foreseen to be carried by the Municipality of Podujevë.
17. Based on the factual situation of the case KI41/16, it results that the Applicant had also pursued two other types of proceedings, namely the administrative conflict proceedings and the enforcement proceedings (on which the Court had decided by the Resolution on Inadmissibility, of 1 June 2017).

Relevant facts of the present case

18. Further, in connection with the circumstances of the present case, on the basis of the case file it results that on 20 November 2007, the Applicant had filed a claim against the respondent-Municipality of Podujevë, for compensation of damage in the amount of 5,000 € along with the legal interest starting from 14 November 2007 until the final payment of the obligation and the procedural costs. This claim was filed as a result of the Applicant's dissatisfaction for the demolition of the building - kiosk.
19. On 24 December 2014, the Basic Court in Prishtina, Branch in Podujevë (hereinafter: the Basic Court) in the legal dispute case of the Applicant, issues the Judgment [C.no.311/07] whereby: (i) it rejected the Applicant's statement of claim filed against the respondent-Municipality of Podujevë, as being unfounded in its entirety; with the said statement of claim the Applicant had requested to have her claim approved and the respondent to be obliged to pay the amount of 5,000 € along with the legal interest starting from 14 November 2007 until the final payment of the obligation and the procedural costs; (ii) The Applicant is obliged to pay the amount of 25 € in the name of the costs of the proceedings, within 15 days from the day of receipt of the judgment, under the threat of forcible execution.
20. On an unspecified date, the Applicant filed an appeal with the Court of Appeals, against the aforementioned Judgment of the Basic Court, due to erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, by proposing to have the Judgment of the Basic Court quashed and the case to be remanded to the court of the first instance for retrial.
21. On 9 August 2019, the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) by Judgment [Ac.no. 1111/2015] rejected the Applicant's appeal as unfounded and upheld the Judgment [C.no. 311/07] of the Basic Court, of 24 December 2014.
22. On an unspecified date, the Applicant filed a request for revision against the above Judgment of the Court of Appeals, due to essential violation of the provisions of the contested procedure and erroneous application of the substantive law, by proposing to have both of these Judgments quashed, or alternatively to modify them and the claimant's statement of claim to be approved in its entirety as founded.
23. On 21 October 2020, the Supreme Court of Kosovo (hereinafter: the Supreme Court) by Judgment [Rev.no. 382/2019] rejected the Applicant's Revision filed against the Judgment [Ac.no. 1111/201] of the Court of Appeals, of 9 August 2019, as being unfounded.

Applicant's allegations

24. The Applicant alleges that the challenged judgment has violated her right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution.

25. In her Referral before the Court, the Applicant alleges that the interested party, namely the Municipality of Podujevë, has without having right demolished the kiosk where she used to work and by which work she has also supported her family. Consequently, according to the Applicant, in addition to the material damage caused by the Municipality of Podujevë in the amount of 5000 Euros, there is also a violation of Article 49 of the Constitution, since she has lost her job, from which she has made her living.
26. Finally, the Applicant requests from the Court to render a Judgment: (i) annulling the challenged Judgment of the Supreme Court, as well as the Judgment of the Court of Appeals; (ii) obliging the Municipality of Podujevë to pay the damage in the amount of 5000 Euros; (iii) finding that there has been a violation of Article 49 of the Constitution as a consequence of the loss of job.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 49 ***[Right to Work and Exercise Profession]***

- 1. The right to work is guaranteed.*
- 2. Every person is free to choose his/her profession and occupation.*

Assessment of the admissibility of Referral

27. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.
28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

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.”

29. The Court further refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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 [...]”

30. As to the fulfilment of these requirements, the Court finds that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Judgment [E.Rev.no. 382/2019] of the Supreme Court, of 21 October 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which she alleges to have been violated, pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
31. In addition to these requirements, the Court must examine whether the Applicant has fulfilled the admissibility criteria of the constitutional referrals established in Rule 39 of the Rules of Procedure of the Court. In this respect, Rule 39 (2) of the Rules of Procedure stipulates that:

Rule 39
(Admissibility Criteria)

“(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.”

32. The Court first notes that the above rule, based on the case law of the European Court of Human Rights(hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.

33. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as “*manifestly ill-founded*” in its entirety or only with respect to any specific claim that a referral may contain. In this regard, it is more accurate to refer to the same as “manifestly ill-founded claims”. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of “*fourth instance*”; (ii) claims that are categorized as “*clear or apparent absence of a violation*”; (iii) “*unsubstantiated or unjustified*” claims; and finally, (iv) “*confused or far - fetched*” claims. (See, more precisely, on the concept of inadmissibility on the basis of a referral assessed as “*manifestly ill-founded*”, and the specifics of the four above-mentioned categories of claims qualified as “*manifestly ill-founded*”, the Practical Guide to the ECtHR on Admissibility Criteria of 28 February 2021; part III. Inadmissibility based on the merits; A. Manifestly ill-founded applications, paragraphs 279 to 308).
34. In the context of the assessment of the admissibility of the Referral, namely, in assessing whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which, the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
35. In this context, the Court first recalls that the circumstances of the case relate to the Applicant's statement of claim, in the contested procedure concerning a compensation of material damage caused by the interested party - Municipality of Podujevë, in the amount of 5000 Euros. The Basic Court had rejected the Applicant's claim filed against the Municipality of Podujevë as unfounded. Acting upon the respective appeal and the request for revision, the Court of Appeals, a fact which is also confirmed by the Supreme Court, had rejected the Applicant's statement of claim as unfounded. The Applicant challenges the findings of the regular courts before the Court, by alleging (i) a violation of Article 49 of the Constitution as a result of erroneous determination of the factual situation and erroneous interpretation of the substantive law. In the following, the Court will examine and assess the Applicant's allegations.
36. The Court also notes that the Applicant had built her constitutional complaint upon the alleged violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, which stipulates:

Article 49 [Right to Work and Exercise Profession]

1. *The right to work is guaranteed.*
2. *Every person is free to choose his/her profession and occupation.*
37. The Court emphasizes that the right to work and exercise the profession from Article 49 of the Constitution is subject to protection in the constitutional system of Kosovo, where these rights are further exercised in the manner and under the conditions defined by law. So, the constitutional guarantee for work

is made in accordance with the law, consequently its content is not defined in more detail.

38. In this context, the Court recalls that in the circumstances of the present case, the main allegations of the Applicant concerning the alleged violation of Article 49 of the Constitution relate to her allegation that she lost her job as a result of the demolition of the Kiosk.
39. As regards the violations of the right to work and exercise profession under Article 49 of the Constitution, the Court recalls that according to the established case law of the ECtHR, the Court declares the referral inadmissible as manifestly ill-founded when the allegations are “*unsubstantiated or unjustified*” and when one of the two characteristic requirements is met, namely;
 - a) when the applicant merely cites one or more provisions of the Convention or the Constitution, without explaining in what way they have been breached, unless this is obvious from the facts of the case (See: to that effect, the case of the ECtHR *Trofimchuk v. Ukraine (decision)* no. 4241/03 of 31 May 2005, see also *Baillard v. France (decision)* no. 6032/04 of 25 September 2008);
 - b) when the applicant omits or refuses to produce documentary evidence in support of his allegations (in particular, decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so (for instance, if the prison authorities refuse to forward documents from a prisoner's case file to the Court) or unless the Court itself determines otherwise(see, the case KI166/20, Applicant *Ministry of Labour and Social Welfare*, Resolution on Inadmissibility, of 5 January 2021, paragraph 42).
40. In the present case, the Applicant alleges a violation of Article 49 of the Constitution, but she fails to specifically explain how the violation of Article 49 of the Constitution has occurred. In this regard, the Court recalls that it has consistently reiterated that the mere reference or mentioning of Articles of the Constitution and the ECHR is not sufficient to build an arguable allegation for a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, the cases KI175/20, Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 22 April 2021, paragraph 81; KI166/20 cited above, paragraph 52; KI04/21, Applicant *Nexhmije Makolli*, Resolution on Inadmissibility of 11 May 2021, paragraphs 38- 39).
41. Therefore, as regards the Applicant's allegation for a violation of Article 49 of the Constitution, the Court finds that the Referral must be declared inadmissible as manifestly ill-founded, because this allegation is considered as an allegation which pertains to the category of “*unsubstantiated or unjustified*” claims, as the Applicant has simply cited a provision of the Constitution, without explaining how it was violated. Therefore, this allegation is manifestly ill founded on constitutional basis, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 28 July 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

Safet Hoxha

Gresa Caka Nimani



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