



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

Prishtina, on 25 September 2015
Ref. No.: RK 843/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI39/15

Applicant

Fetije Haliti

**Constitutional Review of Judgment ARJ-UZVP. no. 4/2015, of the Supreme
Court of Kosovo, of 27 February 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Ms. Fetije Haliti (hereinafter: the Applicant), from village Kushevica, Municipality of Podujeva.

Challenged Decision

2. The challenged decision is Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015, which was allegedly served on the Applicant on 14 March 2015.

Subject Matter

3. Subject matter of the Referral is the constitutional review of the challenged Judgment, which according to the Applicant's allegations has violated her constitutional rights, without mentioning any specific provision of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 March 2015, the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) a request for constitutional review of the challenged decision.
6. On 22 April 2015, the President of the Court by Decision no. GJR. KI39/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI39/15, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Enver Hasani and Arta Rama-Hajrizi.
7. On 18 May 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent to the Supreme Court a copy of the Referral.
8. On 1 July 2015, by Decision Nr. K.SH.KI 39/15, the President of the Court appointed Judge Bekim Sejdiu as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.
9. On 9 September the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

10. On 30 September 2010, the Committee for allocation of apartments in the Municipality of Prishtina (hereinafter: the Committee) for rental use for cases under social care, through Notice no. 02. no. 360-254, informed the Applicant that her application for the allocation of the apartment for rental use for cases under social care was rejected, on the grounds that it does constitute a social case.
11. On an unspecified date, the Applicant through a claim filed with the Supreme Court of Kosovo for initiation of the administrative conflict, challenged the above mentioned Notice due to incomplete and incorrect determination of factual situation and erroneous application of legal provisions.
12. On 29 November 2011, the Supreme Court acting upon the Applicant's claim, by Judgment A. no. 1074/2011, approved the Applicant's statement of claim and annulled the Committee's Notice 02. no. 360/254, of 30 September 2010. This court *inter alia* reasoned that:

*"The Court finds that in this case the responding authority [the Committee] has violated the law to the detriment of the claimant [the Applicant], because the decision- notification mentioned above cannot be considered fair and based on law.
[...] must necessarily be given reasons for all those acts which partially or completely deny, suppress, restrict or affect in any way the legal rights and interests or impose obligations or penalties [...]."*
13. On 27 December 2011, the Municipal Public Attorney's Office in Prishtina filed an appeal against Judgment A. no. 1074/2011, of the Supreme Court of Kosovo, of 29 November 2011, by which requested the annulment of this judgment.
14. On 20 March 2012, the Applicant through the response to the appeal challenged the appeal of the responding party [the Committee] with an allegation that it is ungrounded.
15. On 10 July 2012, the Panel of the Supreme Court of Kosovo by Judgment A.A. no. 201/2011, rejected the appeal of the responding party as ungrounded and upheld Judgment A. no. 1074/2011, of the Supreme Court of Kosovo, of 29 November 2011 with the reasoning that:

"[...] pursuant to Article 11 of the LAP [Law on Administrative Procedure], the respondent was obliged to decide on the request of the claimant by decision [...]."
16. On 5 August 2012, the Committee, deciding in the reconsideration proceedings, by Decision rejected as ungrounded the Applicant's request 02. no. 360-254, of 30 September 2010, with justification that the Applicant did not meet the criteria provided by the Regulation on Allocation of Apartments for Rental Use for Cases

under Social Care, because according to the Committee, the Applicant does not belong to the category of people under social care.

17. Against the Decision of the Committee, of 5 August 2012, the Applicant on 6 November 2012, filed a claim for initiating an administrative conflict before the Basic Court in Prishtina - Administrative Matters Department, through which requested the annulment of the said Decision.
18. On 22 January 2013, the Applicant submitted a complaint to the Office of Disciplinary Counsel regarding the delay of deciding on her case by the Supreme Court of Kosovo (and now by the Basic Court in Prishtina).
19. On 15 April 2013, the Office of Disciplinary Counsel, through the letter no. ZPD/13 /zp/290, informed the Applicant that this office did not find legal basis to open a disciplinary investigation regarding her complaint and informed that the case in question is allocated to a judge and is awaiting to be decided.
20. On 3 June 2014, the Basic Court in Prishtina -Administrative Matters Department, deciding on the Applicant's claim, by Judgment A. no. 1126/2012, rejected her statement of claim as ungrounded. Among other things, this court reasons that:

"[...] The claimant in 2010 was registered as a resident of the Municipality of Podujeva, therefore the Committee rightly concluded that the claimant did not meet the requirement set out in article 7, paragraph (b) of the Regulation. The Committee has also rightly concluded that the claimant was not on the list of persons or families receiving social assistance from the MLSW and when she applied, she did not submit the Certificate issued by the Centre for Social Assistance.

"[...] The claimant was recognized the right to a pension of Civil Invalids and therefore she could not receive social assistance and have the status of a social case, however the court considers that this fact does not affect the eligibility of the claimant because in concrete competition, the apartments were dedicated for cases under social care and not for the war invalids [...]."

21. On an unspecified date, the Applicant filed an appeal against the Judgment of the Basic Court in Prishtina, claiming that the factual situation has been incompletely and incorrectly determined and the substantial and procedural provisions have been violated.
22. On 7 October 2014, the Court of Appeal of Kosovo-Administrative Matters Department, by Judgment AA. no. 327/2014, rejected the Applicant's appeal as ungrounded and upheld Judgment A. No. 1126/2012, of the Basic Court in Prishtina- Administrative Matters Department, of 3 June 2014. This court *inter alia* reasoned that there is no evidence that the Applicant at the time of application, was a resident of Prishtina Municipality at least 5 (five) years as required by regulation, and the latter was not a beneficiary of social assistance but she was a beneficiary of disability pension as civil invalid of war.

23. Against the Judgment of the Court of Appeal, on an unspecified date the Applicant submitted a request for revision to the Supreme Court of Kosovo.
24. On 11 December 2014, the Supreme Court of Kosovo, by Decision Rev. A. no. 16/2014, rejected as inadmissible the Applicant's revision, with the reasoning that against final decision of the second instance in administrative matters, a party may only file a request for extraordinary reconsideration of a decision, not a request for revision.
25. On an unspecified date, the Applicant filed with the Supreme Court a request for extraordinary reconsideration of Judgment AA. no. 327/2014, of the Court of Appeal of Kosovo, of 7 October 2014, due to violations of substantive and procedural provisions.
26. On 27 February 2015, the Supreme Court of Kosovo by Judgment ARJ-UZVP. no. 4/2015, rejected as ungrounded the Applicant's request for extraordinary reconsideration. In this decision, the court reasons among other that:

"[...] on the application date, the claimant has no evidence that she was a resident of MA Prishtina, at least last 5 years and also the latter was not a beneficiary of social assistance."

Applicant's allegations

27. The Applicant alleges that Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015, has violated her constitutional rights. In fact, the Applicant has not specified any concrete provision of the Constitution which she claims to have been violated, but from the circumstances of the case it is assumed that it is about the allegation for violation of the right to a fair trial, guaranteed by Article 31 of the Constitution.
28. Moreover, the Applicant requests the following: *"I request an apartment be allocated to me for cases under social care-civil victims of war because I'm an invalid, unemployed, unmarried and I support my father 86 years old, ill and we have been living at the house of our cousins in Prishtina since 2000"*.

Assessment of the Admissibility of the Referral

29. In order to be able to examine the Applicant's Referral, the Court first assesses whether the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure have been fulfilled.
30. In this regard, the Court refers to Article 113. 7 of the Constitution, which provides that:

"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".

31. In addition, Article 47.2 of the Law provides that:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

32. Furthermore, the Court in this case refers to Rule 36 (1) (b) of the Rules of Procedure:

"The Court may consider a referral if:

[...]

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,

[...]."

33. In the present case, the Court notes that the Applicant has exhausted all effective legal remedies available under the applicable law, and that the challenged decision of the Supreme Court is the last decision in the Applicant's case, therefore in this regard the Applicant is an authorized party.

34. In addition, the Court also refers to Article 48 of the Law, which provides that:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated [...]"

35. Moreover, the Court takes into account Rules 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, which provides that:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

(d) the Applicant does not sufficiently substantiate his claim."

36. Taking this into account, the Court considers that the fact that the Applicant is not satisfied with the challenged decision does not mean that this decision violates her constitutional rights.

37. In this regard, the Court reiterates that it is not its task to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the

regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

38. The mandate of the Constitutional Court in respect of the decisions of the regular courts and of other public authorities, is only the review and assessment whether the evidence has been presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, case *Edwards vs. the United Kingdom*, no. 13071/87, Report of the European Commission on Human Rights, adopted on 10 July 1991).
39. Based on the Applicant's case file, the Court notes that the reasoning given in the challenged decision is clear, and viewed in their entirety, the proceedings before the regular courts have not been unfair or arbitrary (*mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR. Decision of 30 June 2009).
40. Accordingly, the Court considers that the Applicant did not substantiate her allegations and has not submitted any *prima facie* evidence that would justify such allegations of violation of the rights guaranteed by the Constitution.
41. For the reasons mentioned above, the Court considers that the facts presented by the Applicant do not in any way justify her allegation of a violation of the constitutional rights, and the Applicant has not sufficiently substantiated how and why the Judgment of the Supreme Court violated her rights guaranteed by the Constitution.
42. Therefore, the Court concludes that the Applicant's Referral does not meet the procedural admissibility requirements, because it is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 .7 of the Constitution, Article 20 of the Law and Rule 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, on 25 September 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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


Robert Carolan



President of the Constitutional Court


Arta Rama-Hajrizi