



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 8 December 2017
Ref. no.: RK 1167/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI27/17

Applicant

Maliq Zeqiri

**Request for constitutional review of the procedure applied by the
Department of Social Policy and Families, in accordance with Article 179
of the Family Law No. 2004/32 of 20 January 2006, regarding the
adoption of children in the Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Zeqir Maliqi from village Goshica, municipality of Viti (hereinafter: the Applicant).

Challenged act

2. The Applicant challenges the procedure as applied by the Department of Social Policy and Families of the Ministry of Labor and Social Welfare (hereinafter: DSPF), pursuant to Article 179 of the Family Law No. 2004/32 of 20 January 2006 (hereinafter: the Family Law).

Subject matter

3. The subject matter of the Referral is the constitutional review of the procedure applied by DSPF in accordance with Article 179 of the Family Law which establishes the criteria for adoption of children in the Republic of Kosovo by nationals with citizenship of the Republic of Kosovo who work abroad.
4. The Applicant requests from the Court to confirm his allegation that the procedure as followed by the DSPF pursuant to Article 179 of the Family Law is wrong, because the citizens of the Republic of Kosovo applying for adoption of a child based on documentation issued by the Republic of Kosovo, but living and working outside of the Republic of Kosovo, are required by DSPF to undergo child adoption procedure as if they were foreign nationals.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 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 6 March 2017 the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 7 April 2017 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
8. On 11 April 2017 the Court notified the Applicant about the registration of the Referral.
9. On 20 June 2017 the Applicant submitted additional documentation to the Court.
10. On 13 November 2017 the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court to declare the Referral inadmissible due to the failure to meet the procedural requirements under Article 113 of the Constitution.

Summary of facts

11. The Applicant works at the Center for Social Work (CSW) in the Municipality of Viti. There a married couple of Kosovo nationals, working in Italy, applied for adopting a child. Their request for adoption of a child was made based on the documentation issued by the Republic of Kosovo. On 6 April 2017 the DSPF Panel responded to their request that *"It is recommended that the CSW instructs the family to follow the procedures for international adoption and to complete the documentation according to the criteria established in the applicable legislation in Kosovo."*

Applicant's allegations

12. The Applicant alleges that *"... Kosovo nationals working abroad but appearing with local documentation of Kosovo should not be subject to international treatment by the DSPF, there is no reason for that, because this is not provided by any legal rule. This is our complaint - the treatment of locals as internationals."*
13. In addition, the Applicant states that *"The consideration by the Department of Social Policy and Families in Prishtina of the Kosovo citizens as internationals is unacceptable, the dilemmas are here. [The Court is] kindly asked to take the opinion of the Department of Social Policy and Families and assess the legality of the DSPF allegations. Such an assessment would solve some dilemmas among the professional workers of the Centers for Social Work in relation to the Department of Social Policy and Families of Kosovo in Prishtina"*.
14. Furthermore, the Applicant requests *"...the Constitutional Court of Kosovo in Prishtina to prevent the Department of Social and Family Policy from treating the local nationals as internationals only because they work abroad."*

Admissibility of the Referral

15. The Court will first examine whether the Applicant has met the admissibility requirements established in the Constitution and further specified in the Law and in the Rules of Procedure.
16. It is to be noted that the Applicant acts in the capacity of an individual (natural person) and bases his Referral on Article 113.7 of the Constitution.
17. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, which provide:

"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".

[...]

18. In addition, the Court also takes into account Article 48 [Accuracy of the Referral] of the Law, which foresees:

“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.”
19. Regarding this case, the Court specifically refers to Rule 36 [Admissibility Criteria] (3) (a) of the Rules of Procedure, which stipulates:

*“(3) A referral may also be deemed inadmissible in any of the following cases:
(a) the Court does not have jurisdiction in the matter;
[...].”*
20. The Court notes that Article 113 of the Constitution defines the jurisdiction of the Constitutional Court and the authorized parties that can refer questions of constitutional nature to the Court.
21. The Court finds that the Applicant's Referral is related to the procedure applied by DSPF in children adoption and the Applicant is alleging that this authority is erroneously interpreting the Law on Family by treating the local married couples, who work abroad, as foreign nationals.
22. The Court specifies that the essence of the Applicant's Referral relates to the procedure followed by DSPF pursuant to Article 179 of the Law on Family which regulates the procedure of application for child adoption in the Republic of Kosovo.
23. The Applicant requests from the Court to confirm his understanding and interpretation that the procedure as followed by DSPF is wrong and contradictory to the Law on Family itself.
24. Regarding this, the Court reiterates that referrals that basically raise issues of legality and request from the Court an interpretation of a law with respect to the procedure followed, as in the present case, as a rule, fall within the jurisdiction of the regular courts. Indeed, it is not the task of the Constitutional Court to deal with the Applicant's allegation and interpretation that the procedures followed by DSPF are wrong and unlawful.
25. The Court may interfere only where the allegations of a violation of the rights guaranteed by the Constitution are substantiated on a constitutional basis and fall within its jurisdiction as provided by the Constitution, after all formal and procedural criteria stipulated by the Constitution, the Law and the Rules of Procedure have been met.
26. The Court reiterates that it is the role of the regular courts to interpret and apply the relevant rules of procedural and material law (See, *mutatis*

mutandis, European Court of Human Rights, case *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999, para. 28).

27. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and within its constitutional jurisdiction. In other words, the correct interpretation and application of a law is in the jurisdiction of the regular courts (issue of legality) (See ECtHR case, *Akdivar v. Turkey*, Application No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, and see also *mutatis mutandis*, Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
28. Therefore, for the reasons elaborated above, the Court concludes that the Applicant's Referral on constitutional basis does not meet the admissibility requirements, as established by Article 113 of the Constitution and Rule 36 (3) (a) of the Rules of Procedure.
29. Accordingly, in compliance with the abovementioned provisions, the Applicant's Referral is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 20 of the Law and Rules 36 (3) (a) and 56 (2) of the Rules of Procedure, on 8 December 2017, 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

Snezhana Botusharova



President of the Constitutional Court

Arta Rama-Hajrizi