



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

Prishtina, on 30 October 2017
Ref. No.: RK 1147/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI98/16

Applicant

Fazile Morina

**Request for constitutional review of Decision ARJ-UZVP No. 7/2016 of
the Supreme Court, of 31 March 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Cukalović, 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 Referral was submitted by Ms. Fazile Morina from village Hade (hereinafter: the Applicant), represented by lawyer Selatin Ahmeti from Prishtina.

Challenged decision

2. The Applicant challenges Decision ARJ-UZVP No. 7/2016 of the Supreme Court of 31 March 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's right to fair and impartial trial in accordance with Article 31 of the Constitution.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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

5. On 27 June 2016, the Applicant submitted the Referral through mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 July 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Gresa Caka-Nimani and Selvete Gërxhaliu-Krasniqi.
7. On 19 July 2016, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court.
8. On 31 October 2016, the President of the Court appointed Judge Ivan Čukalović as Presiding Judge of the Review Panel, replacing Judge Robert Carolan, who resigned from the position of the Judge on 9 September 2016
9. On 4 July 2017, 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 29 June 2006, the Ministry of Environment and Spatial Planning (MESP) by Decision No. 05/313/2 rejected the Applicant's request for compensation of rent and food expenses as a result of the relocation from her home in Hade village, due to the risk of landslide.
11. On 9 October 2008, by Judgment A. No. 1739/2006, the Supreme Court of Kosovo in administrative conflict proceedings approved the Applicant's claim as grounded, annulled the decision of MESP and remanded the case for reconsideration to MESP.

12. On 27 August 2010, by Decision KRJA 7/2008, the Supreme Court of Kosovo rejected as inadmissible the request for the extraordinary review of the Judgment of the Supreme Court filed by MESP.
13. On 13 May 2011, by Decision No. 313-4/08, in the reconsideration procedure, MESP rejected again the Applicant's request for compensation of rent and food expenses as ungrounded.
14. On an unspecified date, the Applicant challenged the decision of MESP and filed a claim with the Basic Court in Prishtina- Department for Administrative Conflicts (DAC).
15. On 9 October 2014, by Judgment A. No. 444/11, the Basic Court in Prishtina - DAC, rejected the Applicant's claim as ungrounded.
16. On 17 November 2014, the Applicant filed an appeal with the Court of Appeal of Kosovo, on the grounds of erroneous and incomplete determination of factual situation, erroneous application of substantive law and violation of the contested procedure provisions.
17. On 9 October 2015, the Court of Appeal of Kosovo, by Judgment AA. No. 128/2015, rejected the Applicant's appeal as ungrounded and upheld the Judgment DKA A. No. 444/11 of the Basic Court.
18. On 21 November 2015, the Applicant filed a request for revision with the Supreme Court of Kosovo, on the grounds of the erroneous application of substantive law and essential violations of LCP procedure.
19. The Supreme Court of Kosovo, by Decision Rev. A (U) No. 13/2015 (the decision is missing in the case file), rejected as inadmissible the revision of the claimant filed against Judgment AA. No. 128/2015 of the Court of Appeal in Prishtina, of 9 October 2015, emphasizing that the revision against the final decisions for the administrative matters of the second instance cannot be filed.
20. On 25 January 2016, the Applicant filed a request for extraordinary review of the Judgment of the Court of Appeal, stating that the request for revision was erroneously oriented instead of the request for extraordinary review.
21. On 31 March 2016, the Supreme Court, by Decision RJ-UZVP. No. 7/2016, rejected as inadmissible the request for extraordinary review, filed against Judgment AA. No. 114/2014 of the Court of Appeal in Prishtina, of 6 May 2015.

Applicant's allegations

22. The Applicant alleges that the regular courts have violated his right to fair and impartial trial because they did not correctly determine the facts of the case and erroneously applied the substantive law.

Admissibility of the Referral

23. The Court first examines whether the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure, have been met.

24. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraph 7 of the Constitution, which establishes:

“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”.

25. The Court also takes into account Article 48 of the Law, which stipulates:

“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”.

26. Finally, the Court also refers to Rule 36 of the Rules of Procedure, which provides:

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

a) the referral is not prima facie justified, or;

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or”.

27. The Court finds that the Applicant's Referral meets the requirements of Article 113.7 with respect to the authorized party and the exhaustion of legal remedies, it was submitted within the legal deadline under Article 49 of the Law, as well as the requirements for review by the Court.

28. The Court notes that the Applicant specifically claimed that the Decision ARJ-UZVP No.7/2016 of the Supreme Court violated her constitutional right to a fair and impartial trial (Article 31 of the Constitution), which has the following content:

Article 31 [Right to Fair and Impartial Trial]

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

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”

29. When reviewing the allegations of a violation of the right to fair and impartial trial, the Court assesses whether the proceedings in their entirety were fair and impartial, as required by Article 31 of the Constitution (see, *inter alia*, *mutatis mutandis*, *Edwards v. United Kingdom*, 16 December 1992, p 34, Series A No. 247, and *B. Vidal v. Belgium*, 22 April 1992, p. 33, Series A no 235).
30. The Court notes that the Applicant's arguments regarding the violation of the right to fair and impartial trial consist in the erroneous and incomplete determination of factual situation, because the regular courts have erroneously found that the Applicant was not displaced from her home during the process managed by "The Office for Implementation of Hade Project, in the period from 18 November 2004 to 14 February 2005". The Applicant also emphasized that the Supreme Court incorrectly calculated the legal deadline when it rejected as out of time the request for extraordinary review of the Judgment of the Court of Appeal.
31. The Court finds that the Basic Court in Prishtina deciding on the Applicant's claim against the MESP Decision, *inter alia*, reasoned that "*The court also notes that during the inspection of the families in their provisional residences relocated from the area with a high risk coefficient in Hade village, in minutes of 18 May 2006, it was concluded that Fazile Morina, now claimant, lives as head of household at the family of Fazile Morina in rent in the apartment of her brother in Ulpiana, however she does not have a contract on rent; moreover, it is concluded in the minutes that the same is not found in the list of persons resettled from Hade village.*"
32. The Basic Court further stated that "*Based on this situation of the facts, the Court notes that the respondent, by rendering the challenged Decision, has correctly determined the factual situation, due to the reason that on the basis of the evidence that are found in the case files, it results that the claimant did not fulfill the requirements for benefitting financial aid for rent and food, due to the reason that the latter did not resettle along with other persons from Hade village, risk area, a resettlement which the respondent has completed, as well as due to the fact that the latter, in the case of inspection, did not possess a contract on rent for provisional residence, conditions which are needed for acquiring the right to financial aid for rent and food.*"
33. The Court notes that by rejecting the Applicant's appeal, this factual situation was also determined by the Court of Appeal when upholding the Judgment of the Basic Court in Prishtina-DAC.
34. The Court further finds that the decisions of the Supreme Court regarding the request for revision and the extraordinary review of the final decision were dismissed by that court for failure to comply with the procedural legal criteria and did not deal with the merits of the case.
35. In this regard, the Court reiterates that it is not the duty of the Constitutional Court to deal with the errors of fact or law (legality), allegedly committed by the Supreme Court, the Court of Appeal and the Basic Court, unless and insofar

as they may have resulted in a violation of the rights and freedoms of the Applicant protected by the Constitution (constitutionality).

36. The Court further reiterates that it is not its task under the Constitution to act as a fourth-instance court in respect of decisions rendered by the regular courts. It is the duty of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see *Garcia Ruiz v. Spain*, ECtHR, Judgment of 21 January 1999, see also Case KI70/11 of the Applicants *Faik Hima, Magbule Hima And Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
37. In fact, the Court reiterates that the task of the Court is to assess whether the relevant proceedings of the regular courts were fair in their entirety, including the way how the evidence was taken, or whether they were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, paragraph 16, ECtHR Decision on Admissibility of Application of 30 June 2009,; *Edwards v. United Kingdom*, paragraph 34, ECtHR Judgment of 16 December 1992,; *Barbera, and Messeque Jabardo v. Spain*, paragraph 68, ECtHR Judgment of 6 December 1988).
38. The Court notes that the Applicant had numerous opportunities to present her case before the Basic Court in Prishtina, the Court of Appeal and the Supreme Court, using the appeal remedies she has actively participated in all stages of the court proceedings, therefore, the process in its entirety cannot be deemed arbitrary or unfair.
39. In the circumstances of the case, the Court cannot find that the decisions of the regular courts are arbitrary or indicative of a violation of the right to fair and impartial trial, all the more when all the Applicant's allegations relate to violations of laws and not of the Constitution, whereby the Applicant did not in any way present evidence as to how and under which circumstances the alleged constitutional right was violated.
40. In sum, the Court concludes that the Referral is not *prima facie* justified on a constitutional basis and that the facts presented in the Referral by the Applicant do not in any way justify the allegation of a violation of a constitutional right, therefore, pursuant to Rule 36 (2) (a) and (b), the Referral is to be declared inadmissible as manifestly ill-founded.

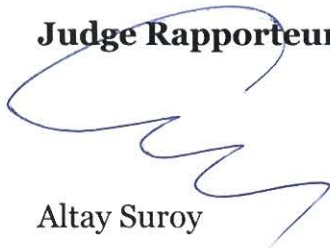
FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (2) (a) and (b) of the Rules of Procedure, in its session held on 4 July 2017, 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; and
- IV. This Decision is effective immediately.


Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi