



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 11 June 2018
Ref. No.: RK 1268/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI40/18

Applicant

Hysen Idrizi

**Constitutional review of Judgment Rev. No. 271/2017 of the Supreme
Court of Kosovo, of 11 January 2018**

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 Referral was submitted by Hysen Idrizi from village Sllatina e Madhe, municipality of Fushë-Kosovë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. No. 271/2017 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 11 January 2018, in conjunction with Judgment CA. No. 1505/2015 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), of 5 July 2017, and Judgment Cl. No. 103/2004 of the Basic Court in Prishtina (hereinafter: the Basic Court), of 30 December 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violate the Applicant's rights and freedoms guaranteed by Articles 21 [General Principles], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 13 (Right to an effective remedy) and 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter: the ECHR), Article 23 (1) of the Universal Declaration of Human Rights, and Articles 1, 2, 3 and 4 of the Convention on the Elimination of All Forms of Racial Discrimination.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [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

5. On 21 March 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 23 March 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 27 March 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 28 May 2018, the Review Panel considered the report of the Judge Rapporteur and by majority made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 20 July 1991, the Applicant's employment relationship with the Public Enterprise "Elektroekonomia e Kosovës" was terminated (hereinafter: P.E. "Elektroekonomia") by Decision No. 4369.
10. On an unspecified date in 1991, the Applicant filed a proposal with the Basic Court of Associated Labor in Prishtina (hereinafter: the Court of Associated Labor), for annulment of Decision No. 4369 of the P.E. "Elektroekonomia".
11. On an unspecified date in 1999, the Applicant requested the Municipal Court in Prishtina (hereinafter: the Municipal Court) to allow the renewal of the case, as the case file had been lost due to the "*war of 1999 in Kosovo*".
12. On 4 March 2004, the Municipal Court, by a decision (with an unspecified number), of 29 March 2004, allowed the renewal of the case file of the Applicant.
13. On an unspecified date, the Applicant modified the claim by suing now the Kosovo Energy Corporation (hereinafter: KEK), which according to the Applicant, was a legal successor of the P.E. "Elektroekonomia".
14. On 10 December 2014, the Basic Court, by Judgment Cl. No. 103/2004, rejected the Applicant's statement of claim for compensation of salaries for the period from 20 July 1991 until 15 July 1999, as ungrounded, as it found that KEK had no passive legitimacy regarding the Applicant's claim for compensation of salaries for the abovementioned period, as it was not the successor of the P.E. "Elektroekonomia". The Basic Court found that KEK was registered as a separate business entity on 6 October 2000, under registration number 80248059 issued by UNMIK.
15. Against the Judgment of the Basic Court (Cl. No. 103/2004), the Applicant filed an appeal with the Court of Appeals, alleging "*violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and of the substantive law*". KEK submitted a response to the Applicant's appeal.
16. On 5 July 2017, the Court of Appeals, by Judgment CA. No. 1505/2015, rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Basic Court (Cl. No. 103/2004), reasoning that the Applicant "*did not prove the passive real legitimacy*" of KEK in this legal matter.
17. Against the Judgment of the Court of Appeals (CA. No. 1505/2015), the Applicant submitted a revision to the Supreme Court where he alleged "*violation of the provisions of the contested procedure and erroneous application of substantive law.*"
18. On 11 January 2018, the Supreme Court by Judgment Rev. No. 271/2017 rejected as ungrounded the Applicant's revision against the Judgment of the

Court of Appeals (CA. No. 1505/2015). The Supreme Court, among other, reasoned:

“

“The enacting clause and reasoning of the Judgment of the Basic Court and of the Court of Appeals do not contain ambiguity and contradictions, on the contrary, the enacting clause is clear, the Claimant’s [Applicant] claims that were rejected have been clearly described, while in their reasoning were given clear and convincing reasons about the decisive facts that are legally valid for decision making on this legal issue. [...]

KEK does not have subject legitimacy in the present case, it has not dismissed the [Applicant] from work, he was dismissed by another legal entity. The party has the subject legitimacy only if it is a participant of the material-legal relationship from which the dispute arose, so in the present case the respondent is not a party to the material legal relationship, therefore there is no real passive legitimacy. The fact remains that the respondent now uses the assets of the former economic entity which dismissed [the Applicant] from work, but [...] is not liable for the unlawful actions of the former economic entity [...], so the statement of claim of the claimant to oblige now the respondent to pay the unpaid personal income from 1991 until 1999 [...] is ungrounded.”

Applicant’s allegations

19. The Applicant alleges that the Supreme Court (Judgment Rev. No. 271/2017) violated his rights guaranteed by Articles 21 [General Principles], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] of the Constitution, Articles 13 (Right to an effective remedy) and 14 (Prohibition of discrimination) of the ECHR, Article 23 (1) of the Universal Declaration of Human Rights, and Articles 1, 2, 3 and 4 of the Convention on the Elimination of All Forms of Racial Discrimination.
20. The Applicant alleges that the decisions of the regular courts are not reasoned as they *“do not contain a summary of the factual findings based on the evidence presented during the proceedings [...], and a meaningful statement of the legal basis on which they are based.”*
21. The Applicant also specifies that *“the Basic Court of the Associated Labor, as a first instance court, by decision MP. No. 4165/91 of 20.11.1991, approved [his] proposal, while it annulled as an unlawful the decision on termination of employment relationship, MP No. 4369, of 20.08.1991”*. According to the Applicant, the abovementioned decision did not take a final form due to the *“occurrence of the war”*. In this regard, the Applicant alleges that by remanding the case again to the Basic Court in the first instance and by rendering a contradictory decision to the one of the Basic Court of the Associated Labor, the Basic Court committed essential violation of the contested procedure.

22. Regarding the legal status of KEK, the Applicant alleges that it is "*the indisputable legal successor [...] of Elektroekonomia of Kosovo*" and has full passive legitimacy to be a party to the proceedings in relation to his case. This, according to the Applicant, is proved by the fact that after the "*end of the war*" he was reinstated to work with KEK without a vacancy based on the continuation of the employment relationship from the previous employment status.
23. The Applicant also alleges that he was dismissed from work in 1991 in a discriminatory manner. In this regard, he also raises the question of how it can "*be explained the absolutely analogous legal procedure and on the same legal basis, and the same period of time (1990-1999) of employees of the Steel Factory "IMK" in Ferizaj [...] which is a direct and subsequent indisputable legal successor of IMK Çeliku*", presenting as evidence the Judgment of the Constitutional Court of 17 December 2010 in case KIo8/09.
24. Finally, the Applicant requests the Court to declare the Referral admissible and grounded.

Assessment of the admissibility of Referral

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

*"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".*
27. The Court also refers to Article 49 [Deadlines] of the Law, which establishes:

"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 [...]."
28. In the present case, the Court finds that the Applicant has submitted the Referral as an individual and as an authorized party, filed the Referral within the time limits specified in Article 49 of the Law and after exhaustion of all legal remedies provided by law.
29. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides:

“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.”

30. The Court also refers to paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which establish 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:*

[...]

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

31. The Court notes that the Applicant alleges that the Supreme Court (Judgment Rev. No. 271/2017), by rejecting as ungrounded the revision filed against the Judgment of the Court of Appeals (CA. No. 1505/2015), violated his right to fair and impartial trial, the right against discrimination, the right to work and the right to an effective legal remedy.
32. The Court recalls that the Supreme Court rejected the Applicant's revision against the Court of Appeals for procedural reasons and did not deal with the substance of the claim, as KEK had no passive legitimacy regarding the Applicant's claim for unlawful dismissal from the P.E. “Elektroekonomia” from 1991 until 1999.
33. In this regard, the Court reiterates that it is not the role of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (see: *mutatis mutandis*, Judgment of the European Court of Human Rights (hereinafter: the ECtHR), of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraph 28).
34. The role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a “fourth instance court” (see: ECtHR case, of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, paragraph 65, see also: *mutatis mutandis* case KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
35. In fact, the Court notes that the Supreme Court assessed the interpretation of the Basic Court and the Court of Appeals as to the procedural provisions regarding the passive legitimacy of KEK.

36. The Supreme Court, when reviewing the Applicant's allegations that the Basic Court and the Court of Appeals did not reason their decisions as to the Applicant's allegations, found that *"the enacting clause and the reasoning of the judgment of the Basic Court and the Court of Appeals do not contain ambiguity and contradiction. On the contrary, the enacting clause is clear, the Applicant's claims that were rejected have been clearly described, while in their reasoning were given clear and convincing reasons about the decisive facts that are legally valid for decision making on this legal matter."*
37. Regarding the passive legitimacy of KEK in the proceedings initiated by the Applicant, the Supreme Court reasoned that *"KEK does not have the subject legitimacy in the concrete case because it did not dismiss the claimant from work, and accordingly it is not a participant of the material-legal relationship from which the dispute has arisen"*. On the other hand, the Court of Appeals reasoned that KEK was registered by UNMIK as a new company in 2000 and as such is not a legal successor of the company P.E. "Elektroekonomia".
38. The Court considers that the conclusions of the Supreme Court and the Court of Appeals were reached after a detailed examination of all the arguments presented by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the proceedings the arguments and evidence he considers relevant to his case.
39. The Court notes that all arguments of the Applicant, which were relevant to the determination regarding the passive legitimacy of KEK in the present case, had been properly heard and examined by the courts. The regular courts also presented all the material and legal reasons related to the challenged decision. Therefore, the Court concludes that the proceedings before the regular courts, viewed in their entirety were fair (see: *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paras. 29 and 30).
40. The Court also recalls that the Applicant alleges that the regular courts violated his right to equality before the law, guaranteed by Article 24 of the Constitution and Article 13 of the ECHR.
41. In this regard, the Court recalls that the treatment is discriminatory if an individual is treated differently from others in similar positions or situations and whether this change in treatment has no objective and reasonable justification. The Court reiterates that the different treatment must pursue a legitimate aim to be justified and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized (See the ECtHR case, *Marckx v. Belgium*, Application no. 6833/74, Judgment of 13 June 1979, paragraph 33).
42. The Court notes that the Applicant has not submitted any *prima facie* evidence nor has he substantiated the allegation that he was discriminated against in the proceedings conducted before the regular courts of the Republic of Kosovo. He also has not argued that his case was similar to the case of the Constitutional Court, No. KIO8/09, Judgment of 17 December 2010.

43. The Court also notes that, with regard to the alleged violations of the right to work and the right to an effective remedy, the Applicant, besides referring to the specific articles of the international conventions, he did not present arguments as to how and why the regular courts violated these rights.
44. The mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts, or the mentioning of articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must provide reasoned allegations and compelling arguments (See: Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI136/14, paragraph 33).
45. In sum, the Court considers that the Applicant has not provided evidence, facts and arguments that indicate that the proceedings before the regular courts have in any way constituted a constitutional violation of his rights guaranteed by the Constitution.
46. Therefore, the Court concludes that Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d), and 36 (2) (d) of the Rules of Procedure, by majority on 28 May 2018

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



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi