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

Prishtina, on 24 June 2019
Ref. no.: 1375/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI199/18

Applicant

Hajriz Haxholli

Constitutional review of Decision Rev. 317/2018 of the Supreme Court of the Republic of Kosovo of 6 November 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Hajriz Haxholli (hereinafter: the Applicant), residing in Prishtina, who is represented by Ali Latifi, a lawyer.

Challenged decision

2. The Applicant challenges Decision [Rev. No. 317/2018] of 6 November 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), which was served on him on 29 November 2018.

Subject matter

3. The subject matter is the request for constitutional review of the challenged decision which, allegedly violated the Applicant's rights, guaranteed by Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 57 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] of 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 December 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 January 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.

7. On 17 January 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 6 June 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant worked as a teacher at a primary school "Ramiz Sadiku" in the village of Marevc and then to another primary school "Dituria" in the village of Shkabaj.

10. On 23 August 2013, the Directorate of Education in the Municipality of Prishtina (hereinafter: the Directorate of Education), by the Decision [No. 03118-12848] of 23 August 2013 informed the Applicant that due to reaching the age of 65, the employment relationship will expire on 23 August 2013. The latter represents the date of retirement of the Applicant.

11. On 30 August 2013, the Applicant requested the Directorate of Education to pay the jubilee salaries for retirement. The Applicant based his request on Articles 42, 43 and 44 of the Collective Contract. The Applicant's request was rejected and as a result did not receive the requested compensation.

12. As the Applicant failed to obtain the right to a jubilee compensation sought from the administrative bodies of the Directorate of Education, he filed a lawsuit with the Basic Court in Prishtina (hereinafter: the Basic Court), requesting it to oblige the Directorate of Education to recognize him the compensation of two jubilee salaries as well as two accompanying monthly salaries due to retirement.

13. On 12 November 2014, the Basic Court, BY the Judgment [C. no. 2313/13], rejected as ungrounded the Applicant's statement of claim. As a ground for rejection of the statement of claim, the Basic Court stated, *inter alia*, that Article 4.1 of the Collective Contract foresees that this contract applies to all employees and employers provided for in Article 3 of the Collective Contract, but no provision of the Collective Contract *"has any norm that has defined the duration of the contract, and there is no provision to regulate the issue of obligations assumed until the signing of the new contract [...]"*. Furthermore, the Basic Court noted that the Applicant's right to a jubilee salaries and for accompanying to retirement was not recognized by the Decision on Pension of 23 August 2013 as some other respondents have recognized to retirees in education. In conclusion, the Basic Court stated that the Applicant's request should be rejected as ungrounded since the Collective Contract of 2005 expired within the meaning of Article 6.4 of Law No. 2001/27.

14. Against the abovementioned judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals on the grounds of violation of substantive and procedural law as well as due to erroneous and incomplete determination of factual situation.

15. On 21 June 2018, the Court of Appeals, by the Judgment [AC. No. 2387/18], rejected the Applicant's appeal as ungrounded and upheld the Judgment [C. No. 2313/13] of 12 November 2014 of the Basic Court. The Court of Appeals justified

the lack of grounds of the appeal based on the fact that, according to it, the Basic Court rejected as ungrounded the Applicant's statement of claim of the Applicant in a fair manner and without essential violation of the provisions of the contested procedure. In addition, it was considered that the Basic Court administered the evidence and the facts in a fair manner and in entirety and correctly applied the substantive law.

16. Against the abovementioned judgment of the Court of Appeals, the Applicant filed a request for revision with the Supreme Court, alleging violation of the provisions of the contested procedure and erroneous application of substantive law.

17. On 6 November 2018, the Supreme Court by the Decision [Rev. No. 317/2018] rejected the Applicant's request for revision as inadmissible because the value of the dispute was below the legal limit of 3,000 euro. The Supreme Court stated that according to paragraph 2 of Article 211 of the Law on Contested Procedure (hereinafter: the LCP), the revision is not permitted.

Applicant's allegations

18. The Applicant alleges that the Supreme Court, by rejecting his request for revision as inadmissible, violated his rights protected by Articles 3, 4, 21, 22, 23, 24, 31 and 57 of the Constitution and the right guaranteed by Article 6 of the ECHR.

19. According to the Applicant, the Directorate of Education *"did not apply Article 90 of the Law on Labor and Collective Contracts from 2005-2017"*, thus violating his fundamental rights and freedoms guaranteed by the Constitution and the international convention. In the present case, according to the Applicant, the Directorate of Education did not apply the Law on Labor, Collective Contract, and his freedoms and rights guaranteed by the Constitution.

20. Regarding Article 3 of the Constitution, the Applicant states that this Article has been violated as not all are being treated equally as *"some of my colleagues have obtained the right to jubilee reward after retirement, while I have been demanding this undeniable right for years"*.

21. As to the decision-making by the Supreme Court, the Applicant states that it has not entered the guarantees the Constitution gives to *"all without distinction"*. According to him, the Supreme Court erred in rejecting his request for revision as being inadmissible with the justification that the value of the dispute was less than 3,000 euro, as it did not enter at all the item 4 of Article 211 of the LCP, where it is stated: *"in labor disputes that the employee initiates against the decision on termination of the employment relationship, the revision is always permissible. [citation from the Applicant]"*. Rejecting his request for revision the Supreme Court acted in violation of item 4 of Article 211 of the LCP.

22. Finally, the Applicant addresses the Court with the following request:

> *"[...] we request that the legality and constitutionality, the Law on Labor, the Collective Agreement be implemented.*
> *As the case of the Supreme Court of Kosovo referred to in Article 211, paragraph 3 - that this provision is in contradiction with the category of this age, by equating with other disputes that do not exceed 3,000 euro, the fundamental rights to life were violated, thus being in contravention and contrary to the Constitution and the Law on Labor Article 90 and Collective Contracts.*
> *We request that former teachers be recognized the right to accompanying salaries and jubilee pay 2 + 2 salaries".*

Admissibility of the Referral

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

24. In this respect, the Court 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".*

25. The Court further refers to Articles 48 [Accuracy of Referral] and 49 [Deadlines] of the Law, which stipulate:

> 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 [...]".

26. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who disputes an act of a public authority, namely the Decision [Rev. No. 317/2018] of 6 November 2018 of the Supreme Court after exhaustion of all legal remedies provided by law. The Applicant has also clarified the rights and freedoms, which he claims to have been violated in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

27. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria based on which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) states that:

"(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".

28. In this regard, the Court recalls that the Applicant after termination of the employment relationship with the Directorate of Education because of the retirement age, had initiated administrative and later court proceedings in relation to compensation for the jubilee salaries for accompanying in retirement. The Basic Court and the Court of Appeals rejected his request as ungrounded, mainly on the ground that there was no legal basis for obtaining such a right and that the Collective Contract to which the Applicant refers was not in force at the time of retirement of the Applicant. Whereas, the Supreme Court rejected the request for revision of the Applicant based on Article 211 of the LCP, according to which revision is not permissible for property-legal disputes in which the claim does not exceed the amount of 3,000 euro. The latter is challenged by the Applicant before the Court, alleging that the latter was rendered in violation of his rights guaranteed by Articles 3, 4, 21, 22, 23, 24, 31 and 57 of the Constitution and Article 6 of the ECHR.

29. In this regard, the Court notes that in substance, the Applicant complains that in his case there was no fair and impartial trial and that he did not enjoy equal treatment compared to some similar cases, in which, according to him, the court recognized the right to monthly salaries as a jubilee reward after retirement, whereas he did not receive them. According to him, the Supreme Court committed a violation of law when it excluded from its reasoning item 4 of Article 211 of the

LCP, rejecting his request for revision as inadmissible and not reasoning his allegations of violation of the Constitution and the fact that revision should have been allowed for the category of his age as it relates to rights from the employment relationship. The Applicant also alleges that it was erroneously decided that the implementation of the Law on Labor and the Collective Contract was not allowed also in his case.

30. With regard to the abovementioned allegations, the Court considers that the Applicant has built his case on a legality basis, namely on determination of facts as to the application of the Collective Contract to which he refers, and on erroneous interpretation of the Law on Contested Procedure by the Supreme Court and those of lower instances, including the Directorate of Education as an administrative body that initially rejected his request for compensation of salaries. The Applicant also alleges that the Supreme Court has erroneously applied the provisions of the LCP when rejecting his request for revision as inadmissible.

31. The Court recalls that these allegations relate to the domain of legality and as such do not fall within the jurisdiction of the Constitutional Court, and, therefore, in principle, cannot be considered by the Court. (See, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35). The only way that these allegations could be considered and approved as grounded is the case when an Applicant succeeds in proving, with convincing arguments, that in his case there has been a violation of the Constitution or of the ECHR.

32. In this respect, the Court reiterates that it is not its task to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). The Court may not itself assess the law that have led the regular courts to that point to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "fourth instance", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts is to interpret and apply the relevant rules of procedural and substantive law (see *García Ruiz v. Spain*, ECtHR, No. 30544/96 of 21 January 1999, paragraph 28 and see also the case: KI70/11, applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

33. The Constitutional Court can only consider whether the proceedings before the regular courts, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See, *among other authorities,* case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).

34. Based on the case file, the Court notes that the reasoning given in the Decision of the Supreme Court is clear and after reviewing all the proceedings, the Court also found that the proceedings before the Court of Appeals and the Basic Court were

not unfair or arbitrary. (See *case Shub v. Lithuania,* No. 17064/06, ECtHR Decision of 30 June 2009).

35. In this regard, the Court notes that the Supreme Court rejected the Applicant's request as "*inadmissible*" – in the procedural aspect and without considering the merits of the request, being based on the provisions of the LCP, according to which, the request for revision should be declared inadmissible in cases where the value of the dispute is below 3,000 euro.

36. More specifically, the Supreme Court in its Decision stated as follows:

> *"From the case file it results that the value of the dispute in this legal case is € 1,941.37. In this case, the Supreme Court of Kosovo, after examining the admissibility of the submission of this revision, found that the latter is inadmissible".*
>
> *Within the meaning of Article 211.2 of LCP* [Law on Contested Procedure] *the revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of dispute does not exceed the amount of 3.000 €. The value of the dispute in the challenged part is € 1,941.37, which does not exceed the limit set by law".*

37. In this regard, the Court further considers that the Applicant did not substantiate that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous application of the procedural law. The Court reiterates that the interpretation of the law is a duty of the regular courts and is a matter of legality (See: case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku,* Resolution on Inadmissibility of 15 November 2016, paragraph 62).

38. The case law of this Court indicates that there were other cases when a decision of the Supreme Court was challenged- such as the present one – by which were rejected as inadmissible the requests for revision, and in which the value of the dispute was below € 3,000. In such cases, the Court, as in the present case, focused only on that whether, in entirety, the respective Applicants have benefited from fair and impartial trial, not entering the issues of legality and aspects of the interpretation of procedural and substantive law, as such prerogatives are the competence of the regular courts. Therefore, the Court declared such cases inadmissible as manifestly ill-founded. (See the cases of the Constitutional Court where a Supreme Court decision was challenged that the request for revision was rejected on procedural grounds as inadmissible:, KI66/18 Applicant *Sahit Muçolli*, Resolution of 6 December 2018, KI110/16 Applicant *Nebojša Đokić*, Resolution of

24 March 2017, KI24/16 Applicant *Avdi Haziri*, Resolution of 4 November 2016, KI112/14 Applicant *Srboljub Krstić*, Resolution of 19 January 2015, KI84/13 Applicant *Gani, Ahmet and Nazmije Sopaj*, Resolution of 18 November 2013).

39. The Court further considers that the Applicant did not substantiate that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous application of the procedural law. The Court reiterates that the interpretation of the law is a duty of the regular courts and is a matter of legality (See, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).

40. In line with its consolidated case law, the Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts, namely of the Supreme Court, the Court of Appeals and the Basic Court, cannot of itself raise an arguable claim of violation of the right to fair and impartial trial or of the equality before the law. (See, *mutatis mutandis,* case *Mezotur – Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

41. Therefore, the Court considers that the Applicant has not substantiated the allegations that the relevant proceedings were in any way unfair or arbitrary, and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR.

42. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 6 June 2019, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

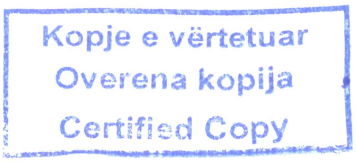
II. TO NOTIFY this Decision to the Parties;

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**

Remzije Istrefi-Peci Arta Rama-Hajrizi



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