



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

Prishtina, on 04 July 2019
Ref. no.: 1386/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI63/18

Applicant

Agim Grushti

**Constitutional review of Decision Rev. No. 7/2018 of the Supreme Court of
Kosovo of 6 February 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 Agim Grushti, from Prishtina, who is represented by the lawyer Ali Latifi (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. No. 7/2018] of 6 February 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), which was served on him on 7 March 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision by which, allegedly violated the Applicant's rights and freedoms 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, according to the allegation, all other articles to Article 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 (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, 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 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
5. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

6. On 26 April 2018, the Applicant submitted the Referral to the Court.
7. On 3 May 2018, the President appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërzhaliu-Krasniqi.
8. On 11 May 2018, the Court notified the Applicant's representative about the registration of the Referral and requested him that, based on Article 21 (Representation) of the Law and Rule 32 (2) (c) of the Rules of Procedure, to submit a power of attorney indicating that he represents the Applicant in the proceedings before the Court.

9. On 16 June 2018, the mandate of judges: Almiro Rodrigues and Snezhana Botusharova was terminated. On 26 June 2018, the mandate of judges Altay Suroy and Ivan Čukalović was terminated.
10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
11. On 30 August 2018, the Applicant's representative submitted an additional decision to the Court but he did not submit the requested power of attorney.
12. On 14 February 2019, as the mandate of the abovementioned four judges ended as judges of the Court, the President of the Court, based on the Law and the Rules of Procedure, rendered Decision No. K.SH. KI63/18, on the appointment of the new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu Krasniqi and Bajram Ljatifi.
13. On 16 May 2019, the Court sent a repeated request to the Applicant's alleged representative and requested that he submits the power of attorney to the Court not later than seven (7) days from the day of receipt of the Court's letter.
14. On 17 May 2019, the Applicant's representative submitted the requested power of attorney to the Court.
15. On 20 May 2019, the Court sent a copy of the Referral to the Supreme Court.
16. 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

17. For about 35 years, the Applicant worked at the University Clinical Center of Kosovo (hereinafter: the UCCK) as "*Responsible for substations and responsible for supervision and maintenance of generators*".
18. On 1 September 2014, the UCCK, by Decision [No. 3473] notified the Applicant that, due to reaching the age of 65, the employment relationship would end on 7 September 2014. The latter represents the date of retirement of the Applicant.
19. On 2 September 2014, the Applicant submitted an appeal against the abovementioned Decision to the Appeals Commission of the UCCK, requesting that two monthly and two jubilee salaries be paid following his retirement.
20. On 4 September 2014, the Appeals Commission of the UCCK by the Decision [No. 162/14] rejected the Applicant's appeal on the grounds that "*there is no legal basis for realization of the claim*" of the Applicant.

21. On an unspecified date, the Applicant filed a lawsuit with the Basic Court in Prishtina (hereinafter: the Basic Court) requesting to oblige the UCCK to recognize the compensation for two jubilee salaries as well as two monthly accompanying salaries due to retirement . In total, through his statement of claim, the Applicant requested 2,077.92 euro and the respective interest.
22. On 28 April 2017, the Basic Court, by Judgment [C. No. 2824/14], 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: (i) The Collective Contract to which the Applicant referred had been in force for only three years, from 1 January 2005 to 1 January 2008 and, accordingly, at the time of the retirement of the Applicant, the legal normative for compensation of the jubilee salaries and accompanying salaries for retirement, did not exist; and (ii) at the time of the Applicant's retirement, the respondent, namely the UCCK, was not a signatory of any Collective Contract which would oblige him to pay salaries for jubilee award and accompanying salaries upon retirement.
23. Against the abovementioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals alleging violations of the provisions of the contested procedure and erroneous application of the substantive law.
24. On 23 October 2017, the Court of Appeals, by Judgment [AC. No. 2435/2017], rejected the Applicant's appeal as ungrounded and upheld the abovementioned Judgment of the Basic Court.
25. The Court of Appeals held that the Applicant's appealing allegations were ungrounded as the Collective Agreement to which he referred was concluded between the Union of Independent Trade Unions of Kosovo, the Ministry of Labor and Social Welfare and the Kosovo Chamber of Commerce and - consequently - in order for the Contract to be applicable in the Applicant's case, the Trade Union Federation of the Ministry of Health should have concluded a Special Contract with the Employer of the Applicant, namely the UCCK. In the present case, according to the Court of Appeals, the UCCK, as an Employer of the Applicant, "*did not conclude any collective agreement with the federation of health employees and in this regards, there is no obligation to apply the provision of the Collective Contract*". Furthermore, the Court of Appeals reiterated the fact that the Applicant referred to the General Collective Contract which was in force only until 31 December 2008, while he reached the retirement age in September 2014, when the latter was no longer applicable to employees in the Republic of Kosovo. According to the Court of Appeals, the Applicant was also retired in the period prior to the entry into force of the current Collective Contract, which entered into force on 1 January 2015, and as such, cannot be applied retroactively to the Applicant.
26. Against the abovementioned Judgment of the Court of Appeals, the Applicant submitted a request for revision to the Supreme Court, alleging violation of the

provisions of the contested procedure and erroneous application of substantive law.

27. On 6 February 2018, the Supreme Court by Decision [Rev. No. 7/2018] rejected as inadmissible the Applicant's request for revision, because the value of the dispute was below the legal limit of 3,000 euro on the basis of which, pursuant to paragraph 2 of Article 211 of Law No. 03/L-006 on the Contested Procedure (hereinafter: the LCP), would be allowed to submit a revision.

Applicant's allegations

28. The Applicant alleges that the Supreme Court, by rejecting his revision as inadmissible, through the challenged Decision violated his fundamental rights and freedoms protected by the Constitution and the ECHR.
29. The Applicant alleges that the violation of Article 3 of the Constitution consists in the fact that not all are treated equally as, according to him, there are cases when *"two teachers, classmates - one wins and the other is rejected by the same court, judge, reasoning that we are acting according to the "decisions" taken by the Supreme Court ?! [...]"*. Violation of Article 3 of the Constitution, according to the Applicant, is also committed by the Supreme Court itself, which *"does not review the guarantee provided by the Constitution to all without distinction"*.
30. The Applicant also alleges violation of Article 90 of the Law on Labor, paragraph 4 of Article 211 of the LCP.
31. As to the former, according to the Applicant, his Employer, namely the UCKK *"did not apply Article 90 of the Law on Labor and Collective Contracts from 2005 – until 2017, by violating LTHDN guaranteed by the International Covenant of 1948, the Constitution of Kosovo, chapter I and II of basic provisions (page 1 – 5), as well as Law on Labor, Collective Contracts, signed by the Government of Kosovo, Ministry of Labor and Social Welfare, Chamber of Commerce, Central Union that guarantee all public and private services, that after retirement each 10th year is paid 1 salary and 3 accompanying salaries [...]"*.
32. As regards the second, the Applicant alleges that the Supreme Court erroneously applied paragraph 2 of Article 211 of the LCP because, in the labor disputes, the latter is excluded by paragraph 4 of Article 211 of the LCP.
33. Finally, the Applicant requests the Court to: *"implement legality and constitutionality, law on labor, collective contracts, which the governments that come into power guarantee and not implement"*.

Assessment of the admissibility of Referral

34. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and in the Rules of Procedure.
35. 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.

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

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...

37. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Decision [Rev. No. 7/2018] of 6 February 2018 of the Supreme Court after exhausting 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.
38. However, in addition to those criteria, the Court should also examine whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) stipulates the criteria

based on which the Court may review a referral, including the criterion that the referral is not manifestly ill-founded. Specifically, Rule 39 (2) stipulates:

(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.

39. In this regard, the Court recalls that the Applicant after the termination of the employment relationship with the UCK because of reaching the retirement age, first initiated the administrative proceedings and subsequently the court proceedings regarding the compensation of two jubilee salaries and two accompanying salaries for retirement. The Basic Court and the Court of Appeals rejected his claim as ungrounded, mainly on the grounds 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 the revision is not permissible for legal-property disputes in which the statement of 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 the Constitution and the ECHR.
40. 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 courts recognized the right to monthly salaries as a jubilee reward after retirement. 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. The Applicant also alleges that it was erroneously decided that the application of the Law on Labor and the Collective Contract was not permitted also in his case.
41. 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 and interpretation of the LCP, the Law on Labor and the Collective Contract by the regular courts.
42. The Court recalls that these allegations relate to the domain of legality and as such do not fall within the jurisdiction of the Court, and, in principle, cannot be considered by the Court. (See, case of the Constitutional Court: KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35). The only way that these allegations could be considered and accepted 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.

43. In this regard, the Court emphasizes 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). It cannot itself assess the law that lead a regular court to issue one decision instead of 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 the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, the ECtHR case: *Garcia Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, par. 28 and see, also case of the Constitutional Court: KI70/11, Applicants *Faik Rima, Magbule Rima and Besart Rima*, Resolution on Inadmissibility, of 16 December 2011).
44. The Constitutional Court can only consider whether the evidence was 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: *among other authorities, Edwards v. United Kingdom*, application no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
45. 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 the ECtHR case: *Shub v. Lithuania*, No. 17064/06, Decision of 30 June 2009).
46. In this regard, the Court notes that the Supreme Court rejected the request for revision of the Applicant as “inadmissible” in the procedural aspect and without considering the merits of the Referral, 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.
47. More specifically, the Supreme Court in its Decision stated as follows:
- “Regarding the revision, the Supreme Court of Kosovo concluded that the revision is inadmissible, because the value of the dispute in this legal matter is 2,077.92 euro, which does not correspond to the value of the dispute which, pursuant to Article 211.2 of the LCP, would be permitted to submit a revision.*
- In accordance with the provision of Article 211.2 of the LCP, 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 subject of contest in the challenged part of the decision does not exceed 3.000 euro”.*
48. Furthermore, with respect to the Applicant’s allegation that the Supreme Court rejected the revision in violation of paragraph 4 of Article 211 of the LCP, the

Court recalls that the article referred to by the Applicant in the circumstances of the present case is related to the letter (c), applies to “*the labor disputes initiated by the employee against the decision to terminate the employment relationship*”. The Applicant's request in the circumstances of the present case was related to a legal-property dispute in which the statement of claim relates to money requests, which falls within the scope of paragraph 2 of Article 211 of the LCP and, had as confirmed the Supreme Court, in order the revision on these issues is allowed, the value of the subject of dispute should be higher than 3000 euro.

49. 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, assessed whether in the entirety of proceedings the Applicants have benefited from fair and impartial trial, not entering the issues of legality and aspects of interpretation of procedural and substantive law, as such prerogatives, as stated above, are the primary jurisdiction of the regular courts. Such cases were declared inadmissible by the Court as manifestly ill-founded (See, the cases of the Constitutional Court, where a decision of the Supreme Court was challenged, which rejected the request for revision as inadmissible on procedural basis: 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).
50. 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 law is a duty of the regular courts and is a matter of legality (See: cases of the Constitutional Court: KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see joined cases 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).
51. 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 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 to equality before the law. (See, *mutatis mutandis*, the ECtHR case *Mezotur – Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; see also, case of the Constitutional Court: KI56/17, cited above, paragraph 42).

52. Accordingly, 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.
53. 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, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, on 6 June 2019, unanimously

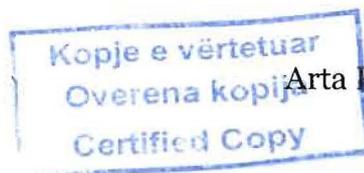
DECIDES

- 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

Gresa Caka-Nimani



Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.