



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

Prishtina, 5 August 2019
Ref. No.:RK 1403/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI32/19

Applicant

Sylejman Januzi

**Constitutional review of Decision Rev. 397/2018 of the Supreme Court,
of 11 December 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 Mr. Sylejman Januzi, residing in the village Barileva, municipality of Prishtina (hereinafter: the Applicant), represented by Ali Latifi, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision [Rev. No. 397/2018] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 11 December 2018, which was served on him on 17 January 2019.

Subject matter

3. The subject matter is the request for constitutional review of the challenged Decision, which allegedly violates 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 25 February 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 March 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 13 March 2019, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit a power of attorney proving that he represents the Applicant in the proceedings before the Court.

8. On the same date, the Court sent a copy of the Referral to the Supreme Court and the Directorate of Education of the Municipality of Prishtina (hereinafter: the Directorate of Education), in the capacity of the interested party.
9. On 19 March 2019, the Applicant's representative submitted the requested power of attorney to the Court.
10. On 22 July 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

11. The Applicant worked as a teacher from 1 September 1974 until 19 November 1984, and from 20 November 1984 until 17 January 2014 as a librarian in the school "AliKelmendi" in the village of Barileva.
12. On 16 January 2014, the Applicant by the Decision [No. 03 No. 118-9261] of the Directorate of Education was informed that due to reaching the age of 65, the employment relationship will expire on 17 January 2014. The latter, represents the date of retirement of the Applicant.
13. On an unspecified date, the Applicant requested the Directorate of Education to pay him three monthly wages as a jubilee reward and two monthly accompanying salaries for retirement. This Applicant's request was rejected on the grounds of "*the lack of legal regulation for the implementation of the collective contract by the Government of Kosovo*".
14. As the Applicant failed to obtain the required compensation, he filed a lawsuit with the Basic Court in Prishtina (hereinafter: the Basic Court) requesting that the Directorate of Education be obliged to recognize the compensation of three monthly salaries for jubilee reward, as well as two monthly accompanying salaries due to retirement.
15. On 25 August 2016, the Basic Court, by Judgment [C. No. 409/2014] rejected as ungrounded the Applicant's lawsuit. As a ground for rejection of the statement of claim, the Basic Court stated, *inter alia*, that: (i) the Applicant referred to Articles 43 and 44 of the Collective Contract - to which the validity period expired - as the same was applicable only to three years and until 1 January 2008 and its validity was extended; and (ii) Section 6 of UNMIK Regulation No. 2001/27 provided that collective agreements may be concluded for a fixed period of time and no more than three years - and the same was foreseen in paragraph 4 of Article 9 of the Law on Labor. In conclusion, the Basic Court stated that the Applicant's claim should be rejected as ungrounded, in accordance with Articles 7 and 8 of the Law on Contested Procedure, because the legal provisions on which the Applicant based his claim were not in force.
16. Against the abovementioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging that the latter was rendered in

violation of substantive and procedural law, and because the Judgment of the Basic Court was unfair and in contradiction with the “*law on labor, international conventions and collective contracts*”.

17. On 19 March 2018, the Court of Appeals by Judgment [AC. No. 3835/2016] rejected as ungrounded the Applicant's appeal and upheld the Judgment [C. No. 409/14] of the Basic Court of 25 August 2016. The Court of Appeals reasoned that the appeal was ungrounded due to the fact that the Basic Court rejected as ungrounded the Applicant's statement of claim of the claimant in a fair and without essential violation of the provisions of the contested procedure. Further, it was considered that the Basic Court administered the evidence and facts fairly and in its entirety, and applied the substantive law in a correct manner.
18. 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.
19. On 11 December 2018, the Supreme Court by Decision [Rev. No. 397/2018] rejected the Applicant's request for revision as inadmissible, because the value of the dispute was below the legal limit, based on which the requests for revision could be considered.

Applicant's allegations

20. 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.
21. According to the Applicant, the Directorate of Education “*did not apply Article 90 of the Law on Labor and Collective Contract, thus violating the fundamental freedoms of human rights, guaranteed by the International Convention of 1948, the Constitution of Kosovo Chapter I and II, and the Law on Labor, collective agreements signed by the Government Kosovo, the Ministry of Labor and Social Welfare, the Chamber of Commerce, the Central Trade Union, which guarantee all public and private services that after retirement every 10 years pay one salary, and 2 monthly salaries due to retirement*”.
22. The Applicant states that in his case Articles 42, 43 and 44 of the General Collective Contract as well as Articles 49, 50 and 51 of the Collective Contract for Primary and Secondary Education Employees in the Republic of Kosovo have not been respected. In this regard, the Applicant alleges that the violation of Article 3 of the Constitution consists in that not all are being treated equally as, according to him, “*some of my colleagues have been eligible for a jubilee reward after retirement, while I have been demanding this undeniable right for years.*”
23. Regarding the decision-making by the Supreme Court, the Applicant states that it did not enter the guarantees that the Constitution gives to “*all without distinction*”. According to him, it follows that some courts respect the right to

monthly salary as a jubilee reward after retirement, while some courts “do not apply neither the labor law” nor “the collective contract”.

24. Finally, the Applicant requests the Court: “not to allow the Supreme Court of Kosovo to violate the fundamental freedoms of human rights, referring to Article 214 paragraph 3 of the LCP and not entering item 4 where it excludes cases where revision is always permitted such as disputes from the employment relationship”.

Assessment of the admissibility of Referral

25. 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.
26. 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.”

27. 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. [...]

28. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; challenges an act of a public authority, namely the Decision [Rev. No. 397/2018] of 11 December 2018 of the Supreme Court; has specified the rights and freedoms, which have allegedly been violated; has exhausted all legal remedies provided by law; and has submitted the referral within the legal deadline.

29. 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 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.”

30. In this regard, the Court initially recalls that the Applicant alleges that the Supreme Court, by the Decision [Rev. No. 397/2018] of 11 December 2018 violated his rights guaranteed by Articles 3, 4, 21, 22, 23, 24, 31 and 57 of the Constitution and Article 6 of the ECHR.
31. 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 of his colleagues who, according to him, have received monthly salaries as a jubilee reward after retirement, whereas he did not. According to the Applicant, the Supreme Court committed a violation of law when it excluded from its reasoning item 4 of Article 211 of the Law on Contested Procedure, rejecting his request for revision as inadmissible and not reasoning his allegations of violation of the Constitution. The Applicant also alleges that it was erroneously decided that the Collective Contract was not permitted also in his case.
32. 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.
33. 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, in principle, cannot be considered by the Court. (See, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35).
34. 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). 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 accordance with ECtHR case law, and also with its already established case law, the Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law and that abstract assessments cannot be made as to why a regular court has decided in a certain way and not in another. (See, case *Garcia Ruiz v. Spain*, ECtHR no. 30544/96, of 21 January 1999, par. 28 and see, also case: KI70/11,

Applicants *Faik Rima, Magbule Rima and Besart Rima*, Resolution on Inadmissibility, of 16 December 2011).

35. The Constitutional Court can only consider whether in a proceeding 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: *inter alia*, *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
36. 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).
37. In the circumstances of the present case, in order to more specifically elaborate the general principles of the constitutional adjudication, 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. The Supreme Court, by interpreting the provisions of the Law on Contested Procedure assessed that it was the fairest way to interpret them, stated that the request for revision should be declared inadmissible as the value of the dispute is below €3,000. Thus, the Supreme Court, on procedural basis of admissibility, rejected the Applicant's request.
38. More specifically, the Supreme Court in its Decision stated as follows:

"From the case file it results that the value of the dispute presented in the lawsuit is € 1,395.45 as specified in the enacting clause of the judgment of the first instance court, which means that the value of the dispute in the challenged part of the judgment is under 3.000 €.

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 contest in the attacked part of the decision does not exceed 3.000 €."

39. 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).

40. 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 the 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, 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).
41. 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 with the decisions 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. (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).
42. The Court also recalls that the Applicant alleged that he was treated unequally because, according to him, some of his colleagues “*have been eligible for a jubilee reward after retirement, while I have been demanding this undeniable right for years.*” Regarding this allegation, the Court notes that the Applicant except for mentioning Article 3 of the Constitution, as an Article that he alleges that it was violated, he has not provided any additional explanation as to how that right was violated and how he was treated unequally compared to his colleagues.
43. 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.
44. 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 22 July 2019, unanimously

DECIDES

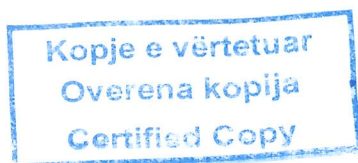
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



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