



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

Prishtina, on 5 October 2020
Ref.No.:RK 1626/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI53/20

Applicant

Kujtim Bakija

**Constitutional review of Judgment Rev. no. 283/2019 of the Supreme Court
of Kosovo, of 9 October 2019**

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 Kujtim Bakija, residing in Gjakova, represented by Avdi Rizvanolli, a lawyer from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is the Judgment [Rev. no. 283/2019] of the Supreme Court of Kosovo, of 9 October 2019.
3. The Applicant received the above mentioned decision on 18 November 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights protected by Article 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 of the European Convention on Human Rights (hereinafter: the ECHR) and Article 54 [Judicial Protection of Rights] of the Constitution.

Legal basis

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

Proceedings before the Constitutional Court

6. On 18 March 2020, the Applicant submitted the Referral via mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 19 May 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 2 June 2020, the Court notified the Applicant of the registration of the Referral. On the same day, the Court notified the Supreme Court of the registration of the Referral.
9. On 7 July 2020, the Court notified the Basic Court in Gjakova of the registration of the Referral and requested them to submit to the Court the acknowledgment of receipt proving when the Applicant received the challenged decision.
10. On 14 July 2020, the Basic Court in Gjakova submitted the requested acknowledgment of receipt to the Court.
11. On 16 September 2020, the Review Panel reviewed the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. Based on the case file, it results that the Applicant was employed in the Kosovo Electricity Distribution and Supply Company (hereinafter: KEDS), in the position of Metering Electrician in the Network Division, District in Gjakova.
13. On 2 February 2015, KEDS, namely the Director of the District in Gjakova, through Decision [no. 214], had imposed on the Applicant the disciplinary measure "*termination of employment relationship*", due to disciplinary violations, after proving that the Applicant together with another employee of KEDS, through their actions, had contributed to the concealment-loss of debt of several customers.
14. On an unspecified date, the Applicant submitted an appeal against the above mentioned decision to the second instance of KEDS, namely to the Executive Director of the Network Division in Prishtina.
15. On 4 March 2015, the Executive Director of the Network Division in Prishtina, through Decision [no. 1730], rejected the Applicant's appeal and upheld the Decision [214] of the Director of the District in Gjakova, of 2 February 2015.
16. On 13 May 2015, the Applicant filed a claim with the Basic Court in Gjakova, requesting annulment of the two above mentioned decisions of KEDS, claiming that the Applicant was not served with the request for initiation of the disciplinary proceedings and was not provided with sufficient time for protection. The Applicant, through the claim, requested reinstatement and compensation of salaries from 1 February 2015 until 30 August 2016.
17. On 29 August 2016, the Basic Court in Gjakova, with Judgment [C. no. 100/2015], rejected in its entirety the Applicant's statement of claim as ungrounded, rejecting the Applicant's claim against the above mentioned decisions of KEDS as well as the request for reinstatement and compensation of salaries. The Basic Court in Gjakova, through its judgment, considered that the actions of KEDS in the case of termination of employment relationship were fair and that there were no irregularities and legal violations and that the disciplinary measure imposed was made in accordance with Article 70 of the Law on Labor of Kosovo.
18. On an unspecified date, the Applicant filed an appeal with the Court of Appeal against the above mentioned judgment of the Basic Court in Gjakova, alleging essential violations of the provisions of the contentious procedure, erroneous determination of the factual situation as well as erroneous application of the substantive law.
19. On 17 May 2019, the Court of Appeals, by Judgment [Ac. no. 4459/2016], rejected the Applicant's appeal as ungrounded and upheld the judgment [C. no. 100/2015], of the Basic Court in Gjakova. The Court of Appeals in its judgment had responded to all allegations of the Applicant.
20. On an unspecified date, the Applicant filed a revision with the Supreme Court against the above mentioned judgment of the Court of Appeals, alleging essential

violations of the provisions of the contentious procedure and erroneous application of the substantive law.

21. On 9 October 2019, the Supreme Court, through judgment [Rev. no. 283/2019], rejected the Applicant's revision as ungrounded. In its judgment, the Supreme Court, *inter alia*, reasoned that *"the court of second instance correctly applied the provisions of the contentious procedure and the substantive law [...]. The court of second instance in its judgment has given sufficient reasons for the relevant facts for a fair trial of this legal matter which are accepted also by this court"*.

Applicant's allegations

22. The Applicant alleges that the challenged decision violated his rights protected by Article 31 [Right to a Fair and Impartial Trial] in conjunction with Article 6 of the ECHR and Article 54 [Judicial Protection of Rights] of Constitution.
23. The Applicant in essence alleges that the regular courts did not reason their decisions, by not addressing the Applicant's allegations, and did not correctly establish the factual situation and have erroneously applied the substantive law.
24. The Applicant initially alleges that, *"KEDS sh.a, using its position as an employer, presented evidence which it had compiled itself, while the court proceeded as a witnesses all employees of KEDS sh.a, for which they were not objective and as a result have brought inequality to the parties in the procedure"*.
25. The Applicant, regarding the Judgment of the Basic Court in Gjakova, states that the latter is unreasoned, adding that *"How is it possible to terminate the employment of a person with such a poor reasoning"*. The Applicant also alleges that the Judgment of the Court of Appeals and the challenged decision are not reasoned, adding that they only briefly upheld the decision of the first instance, not providing sufficient reasons for the Applicant's allegations.
26. The Applicant further states that, *"The regular courts have violated the principle of legality by referring to disciplinary violations allegedly provided by the acts of the employer. "The disciplinary violations must be provided only by law and the employment relationship must be done only for reasons provided by law"*.
27. Finally, the Applicant requests the Court to annul the challenged decision and the remand the case for retrial.

Admissibility of the Referral

28. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
29. In this regard, the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“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.”

30. The Court further examines whether the Applicant fulfilled the admissibility requirements, as prescribed in the Law. In this respect, the Court first refers to Article 47 [Individual Requests] and Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which establish:

Article 47
[Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

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...”.

31. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, that challenges the act of a public authority, namely the Judgment [Rev. no. 283/2019] of 9 October 2019, of the Supreme Court after the exhaustion of all legal remedies. The Applicant also clarified his rights and freedoms that he alleges that have been violated, in accordance with the conditions under Article 48 of the Law, and submitted the Referral in accordance with the deadline set out in Article 49 of the Law .
32. However, in addition to these requirements, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) provides 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."

33. The Court firstly recalls that the Basic Court in Gjakova with Judgment [C. no. 100/2015], rejected in its entirety the Applicant's statement of claim as ungrounded, rejecting the Applicant's claim against the decisions of KEDS whereby the Applicant was imposed the disciplinary measure "*termination of employment relationship*" as well as the request for reinstatement and compensation of salaries. After the Applicant's appeal, the Court of Appeals rejected the Applicant's appeal upholding the above-mentioned judgment of the Basic Court. The Supreme Court had rejected the Applicant's revision against the second instance decision as ungrounded.
34. The Court recalls that the Applicant alleges that the challenged decision was issued in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 of the ECHR and Article 54 of the Constitution.
35. In this regard, the Court notes that in essence, the Applicant complains that in his case the regular courts did not reason their decisions, by not addressing the Applicant's allegations, and did not correctly establish the factual situation and have erroneously applied the substantive law. The Applicant alleges that the witnesses (who were employees of KEDS) in the present case have not been objective and that all this has resulted in inequality for the parties to the proceedings. The Applicant alleges that disciplinary violations should be provided only by law and that the regular courts have referred to the disciplinary violations provided by the internal acts of KEDS.
36. The Court notes that the same allegations were made by the Applicant before the regular courts.
37. In the case of the Applicant, the Court recalls that the Supreme Court in its judgment, while examining the Applicant's allegations, reasoned that the Court of Appeals in the judgment [Ac. no. 4459/2016] of 17 May 2019, correctly applied the provisions of the contentious procedure and the substantive law when it found that the Applicant's appeal is ungrounded. The Supreme Court found that the Court of Appeals had provided sufficient reasons for the relevant facts on which it based its judgment.
38. More specifically, the Supreme Court in the judgment [Rev. no. 283/2019] of 9 October 2019, regarding the main allegations of the Applicant and which the Applicant also raised before this Court, stated:

"Statements in the revision that the court of lower instance has erroneously applied the substantive law when it found that the decision of the defendant to terminate the employment contract of the claimant is lawful, are considered inadmissible. According to the assessment of this Court, the disciplinary procedure against the claimant was initiated and conducted pursuant to Articles 8 and 10 of the Disciplinary Code of the Kosovo Electricity Distribution and Supply Sh.A. (KEDS). The challenged decision on

termination of the employment contract of the claimant was taken in accordance with the provision of Article 70 paragraph 1.4.1 of the Law on Labor of Kosovo, which provides that: "An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in serious cases of misconduct of the employee". The actions of the claimant have rightly been qualified as a serious breach of work duties under Article 7.1 point h) and r) of the Disciplinary Code of the Kosovo Electricity Distribution and Supply Sh.A. (KEDS), where under point (h) as a serious violation is provided "the use by the employee of his/her position, or exceeding the limits of his/her authorization for the purpose of ensuring illegal material benefit for himself/herself or any other person or any business organization or to cause any damage to other persons or business organizations". Under point r) as a serious violation is also provided "intentional failure to declare, or conceal information regarding any serious or minor breach, including excessive recklessness, which is a consequence of negligence".

39. In light of all the above, the Court considers that the reasoning provided in the judgment [Rev. no. 283/2019] of the Supreme Court, of 9 October 2019, rejecting the Applicant's revision, is clear and after reviewing all proceedings, the Court also found that the proceedings before the Supreme Court and the lower instance courts were not unfair or arbitrary (see case *Shub v. Lithuania*, No. 17064/06, Decision of the ECtHR, of 30 June 2009)).
40. In this regard, the Court emphasizes that it is not its task to deal with errors of law allegedly committed by the regular courts (legality), unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would act as a "fourth instance" court, which would result in exceeding the limits established in its jurisdiction. In line with the case law of the ECtHR as well as its already consolidated 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 no abstract assessments can be made as to why a regular court has decided in a certain way rather than in another (See the Case *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 Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
41. The Constitutional Court can only examine whether the evidence have been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a manner that the Applicant has had a fair trial (See, inter alia, the Case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991).
42. In light of the above, the Court further considers that the Applicant has not proved that the proceedings before the Supreme Court and those of the lower instances were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated as a result of erroneous interpretation of procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality. (See the Case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, paragraph

44 and see also the 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).

43. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the challenged decision or the merely mentioning the articles of the Constitution is not sufficient to build an allegation for constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments (see, *mutatis mutandis*, the case of the Court KI1436/14, *Abdullah Bajqinca*, Resolution on Inadmissibility, of 10 February 2015, paragraph 33).
44. As a result, the Court considers that the Applicant has failed to substantiate the allegations that the relevant proceedings were in any way unfair or arbitrary and that the challenged decision violated his rights and freedoms guaranteed by the Constitution.
45. In conclusion, pursuant to Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis, and is consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 39 (2) of the Rules of Procedure, on 16 September 2020, 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

Radomir Laban



Arta Rama-Hajrizi

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