



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 25 November 2013
Ref.No.:RK505/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI28/12

Applicant

Fehmi Ymeri

**Constitutional Review of the Judgment of the Supreme Court of the
Republic of Kosovo, Rev. I. nr. 200/2010, dated 10 January 2012.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Fehmi Ymeri (hereinafter: the Applicant) residing in Prishtina. In the proceeding before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the Applicant is represented by Mr. Habib Hashani, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 10 January 2012, which was served on the Applicant on 7 February 2012.

Subject matter

3. The Applicant alleges that the Judgment of the Supreme Court, Rev. no. 200/2010 has violated the right to work and exercise his profession, as guaranteed by the provisions of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 23 March 2012, the Applicant submitted the Referral with the Court.
6. On 25 April 2012, the President of the Constitutional Court, with Decision No. GJR. KI28/12, appointed Judge Ivan Cukalovic as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI28/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 22 October 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. On 10 June 2000, the head of the Selection Panel notified the Applicant that he has been selected for the position of the Director of Restructuring of the Kosovo Energy Corporation (KEK).
9. On an unspecified date the Special Representative of the Secretary General, appointed the Applicant as a Restructure Director with the Kosovo Energy Corporation (KEK) as of 24 July 2000.
10. On 16 September 2002, the Applicant submitted his letter of resignation mainly due to the difficult state in which the Kosovo Energy Corporation was going through.

11. On 9 May 2003, through decision ref. nr. 1579 the Managing Director of KEK, notified the applicant that since resignation from the position of Restructuring Director, the KEK management has tried to find a new suitable assignment, however without any success. Furthermore, through this letter the Applicant is notified that his working relationship with KEK ends on 10 August 2003.
12. On 30 May 2003, the Applicant replied to the KEK Managing Director where he expressed his disappointment with the decision and asking for the annulment of the decision 1579 dated 9 May 2003 regarding his termination of employment.
13. On 3 June 2006, the KEK managing director requested that the Applicant respects decision nr. 1579 dated 9 May 2003.
14. On 20 May 2009, the Municipal Court in Prishtina by decision C1. No. 257/2008 approved the Applicant's claim and annulled decision no. 157 dated 9 May 2003 regarding the termination of employment and ordered KEK to return the Applicant to his previous position. The court stated that following the Applicant's resignation from his position as Restructuring Director the employer "was obliged to find him another adequate position within KEK in accordance with Article 12 of the UNMIK Regulation 2001/27.
15. On 14 May 2010, the District Court in Prishtina by decision Ac. No. 49/10 rejected the appeal of KEK and confirmed the latter decision of the Municipal Court.
16. On 10 January 2010, the Supreme Court by decision Rev. I. no. 200/2010 approved the revision of KEK and overturned the decision of the lower instances.
17. The Supreme Court of Kosovo in its Judgment stated *"that the courts of the lower instances, based on the administered evidences, have wrongfully implemented the material provisions when they found that the statement of claim of the claimant is founded, for which reason pursuant to the Article 224.1 of the Law on Contested Procedure, the revision of the respondent was accepted and both judgments of the courts of the lower instances were changed and the statement of claim of the claimant is rejected"*.
18. Furthermore, the Supreme Court stated that *"Pursuant to the UNMIK Regulation 2001/27, the Essential Labour Law Article 11.1 point b) is set forth that the employment contract is terminated with a written agreement between the employer and the employee. The act of resignation of the claimant from the position of the manager of the position of the restructuring is a form of termination of the employment relationship pursuant of the above-mentioned provision. The respondent could have expressed a good will and assign the claimant in other working positions but it was not obliged. It was the right of the respondent that in the occasion of the resignation from the position with special responsibility to assign the claimant in another working position which compiles to his professional background, for which the respondent was engaged but it did not have the possibility. Therefore the assessment of the courts of the lower instances that the respondent did not implement the procedure for the termination of the employment relationship towards the*

claimant due to the economic changes pursuant to the Article 12 of the Regulation no. 2001/27, from the Supreme Court cannot be accepted since in the case of the claimant, the employment relationship was terminated pursuant to the Article 11, paragraph 1. Point b) of this regulation”.

Applicant’s allegations

19. The Applicant alleges that his right to work and exercise his profession has been violated due to the fact that *“his resignation was only related to his assigned position as Restructuring Director but not from KEK”*. In addition the Applicant alleges that KEK was obliged to find him another suitable adequate position within the company.

Assessment of the admissibility of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

“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.”

22. The Court also refers to Rule 36 (1) c) of the Rules of Procedure which foresees that

“The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded.”

23. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
24. In sum, the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).
25. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide any evidence that his rights and freedoms have been violated by the regular courts. The Supreme Court provided

the Applicant with a well reasoned judgment as to why his employee was not obliged to find him another position within KEK following his resignation from his assigned role with this institution.

26. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
27. In sum, the Applicant did not show why and how his rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 22 October 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Ivan Čukalović

Prof. Dr. Enver Hasani

