



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

Prishtina, 21 August 2015
Ref. No.: RK 825/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI32/15

Applicant

Shemdi Nishevci

**Constitutional Review of Judgment Rev. no. 188/2014 of the Supreme
Court, of 17 November 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is Mr. Shemdi Nishevci, from Podujeva, who is represented by Mr. Ndue Thaçi, a lawyer.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 188/2014 of the Supreme Court of the Republic of Kosovo, of 17 November 2015 (hereinafter, the Supreme Court), which upheld the decisions of the lower instance courts, according to which there was no legal basis for the annulment of the employer's decision. The challenged Judgment was served on the Applicant on 15 January 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights to equality before the law, to fair and impartial trial and to work and exercise profession, as guaranteed by Articles 3 and 24.2, Article 31, Article 49 of the Constitution and by Article 6 of the European Convention of Human Rights (hereinafter, ECHR) .

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 12 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 21 April 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Bekim Sejdiu.
7. On 13 May 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 1 July 2015, the President appointed herself as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate as Constitutional Judge ended on 26 June 2015.
9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral as inadmissible.

Summary of Facts

10. On 1 February 2009, the Applicant concluded an employment contract (no. 2188/0) with the Kosovo Energy Corporation (hereinafter, the Employer) for the job position of Officer in charge of network Supervisor at the Prishtina District.

11. On 6 September 2010, the Employer (Notice no. 118) informed the Applicant about the termination of his employment contract, due to serious violation of his work duties.
12. The Applicant filed a complaint with the manager of the Prishtina District, requesting reconsideration of the notice on the termination of the employment contract.
13. On 13 September 2010, the Employer (Decision no. 451) rejected the Applicant's complaint.
14. On 19 November 2010, the Applicant submitted a claim to the Municipal Court in Prishtina, against the Employer's decision on rejecting the Applicant's complaint.
15. On 6 November 2012, the Municipal Court in Prishtina (Judgment, C. no. 2046/2010) rejected as ungrounded the Applicant's claim, reasoning that *"this action of the Claimant, even though it did not occur in the workplace but occurred in his house, it represents a serious violation of the work duties"*.
16. On 6 November 2012, the Applicant filed appeal with the Court of Appeal, due to *"the serious violation of the provisions of the contested procedure, incomplete and erroneous ascertainment of the factual situation and due to the erroneous application of the substantive law"*.
17. On 3 January 2014, the Court of Appeal (Judgment Ac. no. 1572/2013) rejected as ungrounded the Applicant's appeal and upheld the Judgment (C. no. 2046/10) of the Municipal Court, reasoning, inter alia that *"when an employee commits theft, destruction, damage or unauthorised use of the employer's assets, the employment contract of the employee shall be terminated"*.
18. The Applicant filed an appeal with the Supreme Court, due to *"essential violations of the provisions of the contested proceeding and the erroneous application of the substantive law"*.
19. On 17 November 2014, the Supreme Court (Judgment Rev. no. 188/2014) rejected as ungrounded the revision.
20. The Supreme Court found that *"The employment contract of the Claimant was terminated after the preliminary procedure was conducted wherein the Respondent had previously notified the Claimant in writing on the procedure being conducted against him, due to the serious violation of the work duties, therefore the allegations in the revision for essential violations of the provisions of the contested procedure have been rejected as ungrounded."*
21. In addition, the Supreme Court also concluded that *"the challenged Judgment does not contain flaws which would have contested the legality of the Judgment"*.

Applicant's Allegations

22. The Applicant claims that the challenged decision violated his rights guaranteed by Articles 3 and 24.2 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] of the Constitution and the rights guaranteed by Article 6 of the European Convention of Human Rights (hereinafter: ECHR).
23. The Applicant alleges that the challenged decision violated his constitutional rights, because the regular courts have not correctly examined the material evidence.

Admissibility of the Referral

24. The Court first examines whether the Applicant's Referral fulfills the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rule of Procedure.
25. In this respect, the Court refers to Article 48 of the Law, which provides:

"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".

26. In addition, Rule 36 (1) (d) of the Rules of Procedure of the Constitutional Court, provides:

(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

27. Furthermore, Rule 36 (2) of the Rules of Procedure provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim.

28. The Court notes that the Applicant claims that the challenged decision violated his rights to equality before the law, the right to fair and impartial trial and the right to work and exercise profession.
29. However, the Court considers that the Applicant merely stated that there were violations of his constitutional rights, without clearly explaining how and why the facts he presented were a violation of these constitutional rights he referred to.
30. The Court reiterates that in order to have a case related to a constitutional violation, the Applicant must show and substantiate that the proceedings before the regular courts, including before the Supreme Court, viewed in their entirety,

have not been conducted in a correct manner and in accordance with the requirements of a fair trial, or that other violations of the constitutional rights have been committed by the Supreme Court during the proceedings.

31. The Court considers that the reasoning of the Judgment of the Supreme Court is extensive and comprehensive, and contains detailed reasoning on why the revision should be rejected as ungrounded and the judgments of the lower instance court had to be upheld, namely because the facts were correctly established, no essential violations of the provisions of the contested proceeding and erroneous application of the substantive law were found.
32. Moreover, the Court considers that the Applicant has not substantiated and proved his claim on a constitutional basis; on the contrary, he confined the discussion to the violation of the provisions of the contested proceedings and erroneous application of the substantive law, which are of legality nature and fall under the jurisdiction of the regular courts.
33. In this regard, the Court is not supposed to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *Garcia Ruiz us. Spain* [GC], No. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-1).
34. The Constitutional Court can only consider whether the evidence before the courts and other authorities has 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, among other authorities, the Report of the European Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
35. In sum, the Court in the present case cannot consider that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary. (See, *mutatis mutandis*, *Shub vs. Lithuania*, Decision of ECHR on the admissibility of application no. 17064/06, 30 June 2009).
36. For the foregoing reasons, the Court concludes that the Applicant's Referral must to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (1) d) and (2) d) of the Rules of Procedure, on 21 August 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

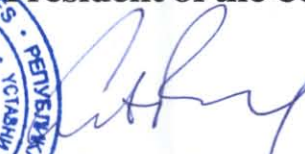
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi