



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

Prishtina, 19 November 2015
Ref. No.: RK 861/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI37/15

Applicant

Rrahim Zeka

**Constitutional Review of Judgment Rev. Nr. 306/2014 of the Supreme
Court of Kosovo, of 16 December 2014**

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 Referral was submitted by Mr. Rrahim Zeka, with residence in village Vërnica, Municipality of Vushtrri (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges Judgment Rev. No. 306/2014 of the Supreme Court of Kosovo, of 16 December 2014, which rejected as ungrounded the Applicant's revision related to his request for reinstatement to his previous working place.
3. The challenged Judgment was served on the Applicant on 29 December 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's right to fair and impartial trial as protected by Article 31 of the Constitution.

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 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 23 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 21 April 2015, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.
8. On 5 May 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 1 July 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur, replacing Judge Arta Rama-Hajrizi, and Judge Altay Suroy as a member of the Review Panel, replacing Judge Almiro Rodrigues.
10. On 14 October 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

11. The Applicant was employed with Kosovo Energy Corporation (hereinafter, the Employer) for an indefinite period of time.
12. On an unspecified date, the Applicant submitted a request to the Pension Fund of Employer to recognize him the right to a monthly payment on behalf of the disability pension.

13. On 29 April 2003, the Employer approved the Applicant's request and decided to send the Applicant on early retirement by an agreement on a monthly payment in the amount of one hundred and five Euros (105 €) on behalf of supplementary pension, starting from 1 April 2004 until 31 March 2009 (hereinafter, Decision of the Employer).
14. After completion of the period of 5 (five) years defined in the aforementioned Decision of the Employer, the Applicant filed a lawsuit with the Municipal Court in Prishtina, requesting his reinstatement to his former working place, or compensation with a monthly payment on behalf of supplementary pension from 1 April 2009 until the fulfillment of the legal requirements for the retirement of the Applicant.
15. On 27 October 2011, the Municipal Court (Judgment C. no. 105/09) rejected as unfounded the Applicant's request.
16. The Municipal Court found that the employment relationship, in terms of a contractual relationship, gives the parties the right to freely determine the rights and duties arising from this relationship. Thus, the employment relationship and the Applicant's right to request monthly payment was terminated after the expiry of the period specified by the Decision of the Employer and fulfillment of the financial obligations of the employer towards the Applicant.
17. On 9 December 2011, the Applicant filed an appeal with the Court of Appeal "*due to essential violations of the procedural provisions, erroneous and incomplete ascertainment of the factual situation, and violation of the substantive law*".
18. On 3 May 2013, the Court of Appeal (Judgment AC. No. 3146/2012) approved the appeal, by quashing Judgment C. no. 105/09 of the Municipal Court and remanding the case to the Municipal Court for retrial.
19. In its judgment, the Court of Appeal stated that "*the appealed judgment contains substantial violation of the provisions of the contested procedure of which this court takes care ex officio under Article 182 par. 1 and item 2, and the factual situation is erroneously determined, and as a consequence of this, the substantive law was erroneously applied, therefore the appealed judgment had to be necessarily quashed*".
20. On 23 July 2013, the Basic Court in Prishtina (Judgment C. no. 1183/2013) rejected as ungrounded the Applicant's statement of claim.
21. On 8 October 2013, the Applicant filed an appeal with the Court of Appeal, "*due to: Erroneous ascertainment of the factual situation; Incorrect application of the substantive law*".
22. On 29 March 2014, the Court of Appeal (Judgment Ac. No. 48/2014) rejected as ungrounded the appeal of the Applicant and upheld the Judgment of Basic Court.

23. The Court of Appeal approved *“the legal conclusion of the first instance court in its entirety as correct and lawful, due to the fact that the challenged Judgment does not contain essential violations of the provisions of the contested procedure (...) and due to the correct and complete investigation of the factual situation”*.
24. On 17 June 2014, the Applicant submitted a request for revision to the Supreme Court, *“due to violations of the provisions of the contested procedure and the erroneous application of the substantive law”*.
25. On 16 December 2014, the Supreme Court of Kosovo (Judgment Rev. no. 306/2014) rejected as ungrounded the Applicant’s revision.
26. The Supreme Court stated that *“the lower instance courts have acted correctly when they rejected the statement of claim of the claimant”*. In addition, the Supreme Court considered that *“the fact that the Claimant never complained against the decision of the Respondent for retirement due to disability, he has accepted the termination of the employment relationship”*.

Applicant’s allegations

27. The Applicant alleges that the Judgment of the Supreme Court violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 of the European Convention Human Rights.
28. The Applicant requests:

*“To determine the factual situation;
To correctly review the entire case file in my case;
I, hereby, request to annul all actions taken by lower instance courts, and approve my Referral in accordance with the Claim C – 105/09, filed with the Municipal Court, of 05.01.2009.”*

Admissibility of the Referral

29. The Court first examines whether the Applicant’s Referral has met the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
30. In that 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”.
31. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

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

(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.*”

32. The Applicant claims that the challenged Judgment violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 of the European Convention on Human Rights.
33. The Applicant alleges that his rights were violated because of erroneous determination of facts and erroneous application of the law by the regular courts. However, he did not indicate how and why these legal errors have violated his constitutional rights.
34. In fact, the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights. (See: *Vanek vs. Slovak Republic*, No. 53363/99 ECHR, Decision, of 31 May 2005).
35. In fact, the Court considers that the Supreme Court thoroughly reasoned why the Applicant’s statement of claim was rejected. In addition, the Supreme Court found that the Employer has fulfilled its obligation to the Applicant, in accordance with the Decision of Employer, which was delivered upon request of the Applicant and was not challenged by him
36. Moreover, the Court recalls that the Supreme Court concluded that the Applicant never complained against the decision of the Employer for retirement due to disability and thus “*he has accepted the termination of the employment relations*”. The Applicant has not explained how and why that conclusion of the Supreme Court violates his rights to equality before the law, to fair and impartial trial or to judicial protection of rights.
37. The Court further considers that the proceedings in the regular courts have not been unfair or arbitrary (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
38. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).
39. Therefore, the Court does not 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 case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

40. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated and proved his allegation.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of Procedure, in the session held on 14 October 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.

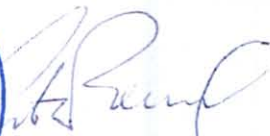
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi