



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

Pristina, 21 July 2014
Ref.no.:RK680/14

RESOLUTION ON INADMISSIBILITY

Case No. KI45/14

Applicant

Faton Sefa

**Constitutional Review of
Decision Rev. no. 60/2013 of the Supreme Court,
dated 13 November 2013**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Faton Sefa, residing in Gjakova, represented by Mr. Teki Bokshi, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Decision Rev. No. 60/2013 of the Supreme Court of the Republic of Kosovo, dated 13 November 2013, which was served on the Applicant on 13 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions], Article 102 [General Principles of the Judicial System], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR), namely Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol 1.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceeding before the Constitutional Court

5. On 11 March 2014, the Applicant filed the Referral KI45/14 with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 1 April 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Enver Hasani.
7. On 7 May 2014, the Court informed the Applicant of the registration of the Referral and requested him to submit the Power of Attorney and provide some clarification of the Referral, namely the relationship with other previous referrals KI75/12 and KI37/13. On the same date, the Court sent a copy of the Referral Supreme Court.
8. On 16 May 2013, the Applicant submitted the Power of Attorney, without providing any other additional clarification. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.
9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.

10. On 1 July 2014 the President of the Court, by Decision no. KSh. KI45/14, replaced Judge Kadri Kryeziu with Judge Arta Rama-Hajrizi as a member of the Review Panel.
11. On 1 July 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. The factual basis of the referral KI45/14 is the same as the one of the referrals KI75/12 and KI37/13 also filed with the Court by the Applicant.
13. The bulk of the facts has to do with the question of termination on 18 August 2006 of the employment contract between the company “Hidrosistemi Radoniqi” in Gjakova (hereinafter, the Company) and the Applicant.
14. That question was subject of discussion in administrative and judicial proceedings in the regular courts, namely until 2 May 2012.
15. On that date of 2 May 2012, the Supreme Court (Judgment Rev. no. 106/2010) rejected as ungrounded the Applicant’s request for revision. The Supreme Court held that the “[...] *employment relationship of claimant is terminated in compliance with the procedure determined by applicable law, thus each claim in the revision based on this is inadmissible.*”
16. However, on an unspecified date, the applicant submitted a request to reopen the procedure finalized by Judgment Ac. No. 176/2009 of the District Court in Peja dated 9 February 2010.
17. Meanwhile, on 13 August 2012, the Applicant filed the Referral KI75/12 challenging the Judgment of the Supreme Court, because it allegedly ignored the procedural violations before the disciplinary commission.
18. On 13 December 2012, the District Court in Peja (Decision KAC. no. 6/2012) rejected as ungrounded the request for the reopening of the procedure in the District Court in Peja finalized by Judgment Ac. No. 176/2009 of the District Court in Peja dated 9 February 2010. The applicant submitted a request for revision before the Supreme Court.
19. Meanwhile, on 15 January 2013, the Constitutional Court declared the referral KI75/12 inadmissible as manifestly ill founded (See Resolution on Inadmissibility in Case KI75/12, Constitutional Review of Judgment of the Supreme Court, Rev. no. 106/2010, dated 2 May 2012).
20. On 13 March 2013, the Applicant filed the Referral KI37/13 requesting re-examination the Resolution on Inadmissibility of the Constitutional Court in Case KI75/12, claiming that the Court had not reviewed the additional evidence submitted by him.

21. On 31 May 2013, the Constitutional Court declared the referral KI37/13 inadmissible as the Court had already decided on the matter in the referral KI37/13 (See Resolution on Inadmissibility in Case KI37/13, Request for re-examination of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, KI75/12 dated 15 January 2013”).
22. On 13 November 2013, the Supreme Court (Decision Rev. No. 60/2013) rejected as ungrounded the revision submitted by the Applicant against the decision of the District Court in Peja KAC. no. 6/2012 dated 13 December 2012. The Supreme Court held that *“the lower instance courts have duly applied the substantive law, when they found that the proposal for reopening of procedure is ungrounded due to the fact, respectively evidence on which the claimant based the proposal for reopening of procedure, does not present new evidence based on which could be rendered a more favorable decision on the party if it was used in previous procedures”*.
23. The reference to the above described facts and quoted decisions are taken from the previous referrals KI75/12 and KI37/13, as the additional clarifications were not provided by the Applicant.

Applicant’s allegations

24. As in the previous referrals submitted to the Court, the Applicant alleges that the Judgments of the regular courts were taken in violation of his constitutional rights as guaranteed by the Constitution and ECHR because both the District Court in Peja and the Supreme Court, allegedly, ignored the procedural violations before the disciplinary procedure.
25. Furthermore, the Applicant alleges that the termination of the Applicant’s employment contract was in contradiction with UNMIK Regulation 2001/27 because he never had a meeting with the company and the termination of employment relationship never specified what legal provisions were violated by him.
26. In addition, the Applicant requests the Court to *“to decide that by the examined evidence before the first instance court, that Court has acted correctly, applied the law and the Constitution of the Republic of Kosovo and that the proceedings before the first instance court in general, viewed in their entirety, were kept in such a way so that the Applicant of this referral in that stage of proceedings to have had fair trial despite violations of such principles from District Court in Peja and the Supreme Court of Kosovo in the proceeding of revision”*.

Admissibility of the Referral

27. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
28. 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”.

29. The Court also refers to Rule 36 (3) e) of the Rules of Procedure which foresees:

A Referral may also be deemed inadmissible in any of the following cases:

(...)

e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision

30. The Court notes that the termination of the contract is a subject matter common to the three referrals filed by the Applicant with the Court, even though having two judgments of the Supreme Court, one on revision of the proceedings (Judgment Rev. no. 106/2010) and the other on revision of repetition of the proceedings (Decision Rev. no. 60/2013).

31. The Court also notes that the Applicants did not substantiate a new claim on constitutional grounds and did not provide new evidence that his fundamental rights and freedoms have been violated by the regular courts.

32. The Court considers that the Supreme Court sufficiently reasoned its Decision (Rev. no. 60/2013) while rejecting the revision submitted by the Applicant. Therefore, the 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).

33. The Court further notes that the Applicant did not make in the Referral KI45/13 any reference to the previous submitted referrals KI75/12 and KI37/13, which have already been decided by the Constitutional Court. Such conduct is not in compliance with the right to individual petition according to the European legal standards. (See *mutatis mutandis*, *Hadrabova and others v Czech Republic*, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).

34. Furthermore, the Court reiterates that it is up to the Applicant to inform the Court of all circumstances relevant to the referral and not to retain any information known to him. Otherwise, retaining information or misleading the Court, or insisting on the same subject matter might entail an abuse of the right to petition.

35. The Court further notes that, in connection with Referrals KI75/12 and KI37/13, the Applicant has had the opportunity to acquaint himself with the procedure of the Court. Furthermore, the Court's decisions on the inadmissibility of his previous referral's must have made the Applicant aware of that the Referral KI45/13 is substantially dealing with the same subject matter already examined by the Court in the Referrals KI75/12 and KI37/13 and no relevant and pertinent new information was presented.

36. In sum, the Court considers that a Decision on the concerned subject matter has already been issued and the Applicant has not provided sufficient grounds for a new Decision.
37. Therefore, pursuant to Rule 36 (3) (e) of the Rules of Procedure, the Referral is inadmissible (See Resolution on Inadmissibility in case KI75/12 dated 2 May 2012 and Resolution on Inadmissibility in case KI37/13 dated 15 January 2013).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (3) e) and 56 (2) of the Rules of Procedure, on 1 July 2014, 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani