



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

Prishtina, on 23 December 2016
Ref. No.:RK1022/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI55/16

Applicant

Slobodan Radović

**Request for constitutional review of Decision Rev. No. 2/2016 of the
Supreme Court of the Republic of Kosovo, dated 12 January 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Slobodan Radović from Mitrovica (hereinafter: the Applicant), who is represented by the Judex Law Firm in Prishtina.

Challenged Decision

2. The Applicant challenges Decision Rev. No. 2/2016 of the Supreme Court, of 12 January 2016. The Decision of the Supreme Court was served on the Applicant on 16 February 2016.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the aforementioned decisions which allegedly violated the Applicant's rights under Article 19 [Applicability of International Law], Article 24.2 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

4. Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the 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

5. On 18 March 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 April 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 1 August 2016, the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 15 November 2016, 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

9. From 23 June 2003 to 22 September 2005, the Applicant served as a policeman in the Kosovo Police Service. On 22 September 2005 he resigned from his job position.
10. On 14 March 2015, the Applicant submitted a request to the Kosovo Police (hereinafter: KP) to be reinstated to his previous post.
11. Since the Applicant did not receive any answer from the KP, he submitted a request to the Ministry of Internal Affairs (hereinafter: MIA) to be reinstated to his previous post. Again, the Applicant did not receive any answer.

12. On 19 June 2014, after the administrative silence of the KP and MIA, the Applicant filed a civil claim with the Basic Court in Mitrovica, whereby he requested that items 7 and 8 of the "Brussels Agreement" (*The first international agreement of principles governing the normalization of relations between the Republic of Kosovo and the Republic of Serbia of 2013*), be respected and that he be reinstated to his previous position.
13. On 27 November 2014, the Basic Court in Mitrovica rejected the Applicant's claim because, pursuant to the Law on Basic Rights from Employment Relationship and Law No. 3/L-212 on Labor, it had been filed out of time.
14. In the reasoning of its Decision, the Court stated:

"[...] the legal provisions stipulates that a worker who is not satisfied with the final decision of the competent authority in the organization or if the authority does not issue a decision within 30 days from the submission of the request or complaint, he is entitled within the next 15 days to ask for protection of his rights before the competent court. The claimant did not do it.... "
15. Within legal deadline, the Applicant filed an appeal with the Court of Appeal against the decision of the Basic Court in Mitrovica, alleging essential violations of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
16. On 9 October 2015, the Court of Appeal, by Decision Ac. No. 132/2015, rejected the Applicant's appeal as ungrounded and upheld the decision of the court of first instance, with the reasoning: *"The Court of Appeal found that the first instance court in a correct and complete determination of factual situation, has correctly applied the substantive law when it found that the claim was out of time and in the challenged decision gave sufficient legal and factual reasons and relevant facts, important for resolution of this matter...."*
17. Within legal deadline, the Applicant submitted a request for revision to the Supreme Court, alleging essential violations of the contested procedure provisions and erroneous application of the substantive law.
18. On 12 January 2016, the Supreme Court by Decision Rev. no. 2/2016 rejected the Applicant's request for revision as ungrounded, stating that: *"according to the assessment of the Supreme Court, the challenged decision does not contain flaws that could challenge its fairness related to erroneous application of the substantive law, like the first-instance court, this court too finds that the claimant's claim is out of time. because the claimant did not request protection of his rights under employment relationship within the period provided for in Article 83 of the Law on Basic Employment Relationship ... In accordance with Article 78 and 79 of the Law on Labour of Kosovo, the claim of the claimant is out of time."*

Relevant Law (*Labour Law no. 03/L-212*)

Article 78 Protection of Employees' Rights

“1. An employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated.

2. Employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted.

[...]”

Article 79 Protection of an Employee by the Court

“Every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court.”

Applicant's allegations

19. The Applicant has based his Referral upon the fact that the courts have not correctly applied the Brussels Agreement as *lex specialis* regarding the establishment of his employment relationship.
20. Moreover, the Applicant claims: [...] *“After the legal decisions, he has been prevented from being reinstated in his previous job position, thus, his right to work and exercise a profession was denied to him and by these decisions, the courts violated also Article 19 of the Constitution.”*
21. The Applicant requests the Court to declare the Referral admissible; to hold that there has been a violation of Article 24 [Equality Before the Law], Article 49 [Right to Work and Exercise Profession], that there has been a violation of Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 of the European Convention on Human Rights (Right to a fair trial).

Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and Rules of Procedure.
23. 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.”

24. The Court also refers to Article 48 of the Law which establishes:
- “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 a public authority is subject to challenge.”*
25. The Court further takes into account Rules 36 (2) (b) of the Rules of Procedure which stipulate:
- (2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
- (...)*
- (b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”*
26. The Court notes that the Applicant alleges a violation of several Articles of the Constitution, by connecting it with the rejection of his claim by the regular courts, regarding the reinstatement to his working place.
27. In the present case, the Court notes that the regular courts rejected as ungrounded the Applicant’s statement of claim, for purely formal reasons, because it was submitted was out of time limit, and because it was not submitted as stipulated by relevant articles of the Labor Law (Article 78 and 79), therefore, the courts have not specifically addressed the very substance of the Applicant’s request.
28. The Court refers to the case law of the European Court on Human Rights (hereinafter: ECtHR), according to which, it is not the task of the Court to review the conclusions of the regular courts in respect of the factual situation and application of the substantive law (see ECHR, *Pronina v. Russia*, decision on admissibility of 30 June 2005, Application No. 65167/01), nor to replace the regular courts in assessing the facts and evidence. The role of the Constitutional Court is to examine whether there has been a possible violation of the constitutional rights in the proceedings conducted before the regular courts.
29. The Court recalls that in accordance with the case law of the ECtHR, the fairness of a proceeding is assessed based on the procedure as a whole (ECtHR *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, Series A No. 146, paragraph 68), and based on this, the Court will be based on the ECHR case law when assessing the constitutional review of the Applicant’s allegation, as well as the established case law of this Court.
30. In this regard, the Court further notes that the Applicant considers that the regular courts violated the rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR.
31. The Court emphasizes that the dissatisfaction of the Applicant with the decision, cannot of itself raise an arguable claim for the constitutional violation

of the right to a fair trial. When alleging violations of the Constitution, the Applicant must present convincing and compelling arguments to substantiate his allegations, in order for the request to be grounded (See Resolution on Admissibility of 30 June 2014, No. KI198/13, *Privatization Agency of Kosovo*).

32. The Court also finds as ungrounded the Applicant's allegations related to a violation of Article 24.2 [Equality Before the Law] of the Constitution, because the conducted procedures and rendered decisions, which reject the Applicant's claim as out of time, were not conducted and decided on the basis of discrimination referred to in Article 24.2 of the Constitution, but solely based on the relevant legal rules, namely, Articles 78 and 79 of the Law on Labor.
33. The Court also recalls that the ECtHR defines that the discrimination "is treating differently, without an objective and reasonable justification, persons in relevantly similar situations" (see: Judgment *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECtHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44)."
34. The Court further finds as ungrounded the Applicant's allegations of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, because he is not a victim of an act of a competent authority in respect of loss or termination of the employment relationship, nor he is prohibited by a decision of an authority to work and exercise profession to which he considers he is entitled to, but the termination of his employment constitutes an act of his own will in a given time and the circumstances.
35. In conclusion, based on all the facts of a present case, which follow from the documents submitted to this Court and from the appealing allegations of the Applicant, the Court found that the regular courts gave answers and detailed reasoning in its decisions as to why his claim was rejected as out of time, therefore, it cannot be concluded that the application of the relevant legal provisions in any part of the proceedings before the regular courts was arbitrary, nor that the application of procedural law and the guarantees was to the detriment of the Applicant.
36. Therefore, the Court considers that the Applicant has not substantiated his claims, nor he has submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see: case no. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision of the Court of Appeal of Kosovo, CA. no. 2129/2013, of 5 December 2013 and Decision of the Court of Appeal of Kosovo, CA. no. 1947/2013, of 5 December 2013).
37. Therefore, the Referral is, on constitutional basis, manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 15 November 2016, 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; and
- IV. This Decision is effective immediately;

Judge Rapporteur

Selvetë Gërxhaliu-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi