



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

Pristina, on 2 June 2016
Ref. no.:RK945/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI163/14

Applicant

Enis Beqiri

**Constitutional review of Decision Rev. no. 181/2014 of the Supreme Court of the
Republic of Kosovo, of 8 July 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
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Enis Beqiri residing in Gjilan, Kosovo (hereinafter: the Applicant). He is represented by Mr. Avdullah Ismajli, a lawyer practicing in Gjilan, Kosovo.

Challenged decisions

2. The Applicant challenges the Decision (Rev. no. 181/2014, of 8 July 2014) of the Supreme Court, Decision (Ac. no. 4275/12, of 18 November 2013) of the Court of Appeal and Decision (C. no. 2505/2010, of 13 May 2011) of the Municipal Court in Prishtina.
3. The challenged decisions have rejected the Applicant's claim to re-instate him in his previous job at ProCredit Bank.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, by which, allegedly, his rights guaranteed by Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and the rights guaranteed by Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR) were violated.

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 3 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 December 2014, the President of the Court, by Decision GJR. KI163/14 appointed Judge Altay Suroy as Judge Rapporteur and on the same date, by Decision KSH. KI163/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 18 December 2014, the Court informed the Applicant of the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court and ProCredit Bank.
9. On 27 January 2014, the Court requested the Basic Court in Prishtina to submit the Applicant's case file C. no. 2505/2010.
10. On 30 January 2015, ProCredit Bank, in capacity of the interested party, submitted to the Court its comments in respect of the Referral.
11. On 1 July 2015, the President of the Court, Arta Rama-Hajrizi, by Decision KSH. KI163/14 replaced the member of the Review Panel Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.

12. On 16 December 2015, the Applicant submitted another letter to the Court whereby he requested that the Referral is decided with urgency.
13. On 18 December 2015, the Review Panel considered the report of the Judge Rapporteur and decided on the inadmissibility of the Referral. On the same date, the President of the Court, in accordance with Rule 44 (4) of the Rules of Procedure assigned Judge Robert Carolan, as Presiding member of the Review Panel, to prepare the Resolution on Inadmissibility considering that the Judge Rapporteur was not among the majority.

Summary of Facts

14. On 25 October 2005, the Applicant concluded an employment contract for an indefinite period of time with ProCredit Bank, branch in Gjilan.
15. On 11 November 2010, ProCredit Bank, by Notification No. 11-517, notified the Applicant on the termination of his employment contract. The notification read as follows:

“According to the evaluation of your work performance made on 10 November 2010, it has been concluded that you failed to show satisfactory work performance. Based on the above, ProCredit Bank reserves the right to terminate the employment relationship pursuant to paragraph 7 c) and d) of the employment contract and in accordance with Article 5.10.1, section g) of the Personnel Policy. [...] You have the legal right to appear before the competent employment authorities, in order to look for any employment opportunity with other institutions for protection of your interests”.

16. On 22 November 2010, the Applicant filed a claim against ProCredit Bank with the Municipal Court in Pristina requesting the annulment of the abovementioned Notification, reinstatement in his previous job and compensation of wages. Amongst other allegations, the Applicant stated that *“ProCredit Bank does not provide me with a right to appeal; therefore I am obliged to seek protection of my rights through courts [...]”.*
17. In the meantime, the Applicant also filed a complaint with the Labour Inspectorate whereby he complained that ProCredit Bank had unlawfully dismissed him from work.
18. On 24 December 2010, the Labour Inspectorate (Report, No. 003665) concluded that the internal act of ProCredit Bank did not foresee a two-instance appeal procedure where employees could raise their complaints or claims, and it recommended that the Bank fix such flaws in order to be in line with the provisions of applicable law on labour disputes.
19. On 13 May 2011, the Municipal Court (Decision, C. No. 2505) rejected the Applicant’s claim as inadmissible. It reasoned that the Applicant should have filed an appeal against the above-mentioned Notification with ProCredit Bank within fifteen (15) days of receipt, as provided by the applicable law. The

Municipal Court concluded that since the Applicant did not avail himself of this opportunity, the claim was premature and as such was inadmissible.

20. The Applicant filed an appeal against the Decision of the Municipal Court with the Court of Appeal alleging a wrong determination of the factual situation and violation of material and procedural law. He requested from the Court of Appeal to annul the Decision of the Municipal Court as unlawful and remand the case for re-trial. Moreover, the Applicant reiterated again that ProCredit Bank's Notification provided a misleading general advice which made him file a claim directly with regular courts as the only means to protect his rights.
21. On 18 November 2013, the Court of Appeal (Decision Ac. No. 4275/12) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Prishtina. The Court of Appeal held that: *[...] the first instance court has correctly acted when by the challenged decision dismissed the claim of the claimant, because two presumptions provided by Article 83 of the Law on Basic Rights of Labour Relations were not met. [...]*
22. On 5 February 2014, the Applicant submitted a request for revision with the Supreme Court against the Decision of the Court of Appeal, due to essential violations of the contested procedure provisions, erroneous application of the substantive law and due to non-consideration of his submissions by the lower instance courts.
23. On 8 July 2014, the Supreme Court, (Decision Rev. no. 181/2014), rejected as ungrounded the revision of the Applicant and held that:

“Based on this situation of the case, the Supreme Court of Kosovo finds that the lower instance courts have assessed correctly when they have found that the claim of the claimant is inadmissible. [...] In the present case, the claimant did not request the protection of his rights before the competent authority of the respondent, therefore, according to the assessment of this court, due to the fact that the claimant did not request internal legal protection, the lower instance court have correctly applied the provisions of the contested procedure, when they found that the claim should be rejected as inadmissible. The Supreme Court of Kosovo assessed as ungrounded the allegations in the revision that the decisions of the lower instance courts were rendered by procedural violations, namely with erroneous application of the substantive law, as in fact, in this case we do not have to do with the erroneous application of the substantive law, when the claim is rejected due to lack of procedural presumption for filing the claim, namely for conduct of the proceedings”.

Applicant's allegations

24. The Applicant alleges that the regular courts have violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution and his right guaranteed by Article 6 [Right to a fair trial] of the ECHR.

25. In respect of his right to fair and impartial trial, the Applicant alleges that the Supreme Court did not consider all of the Applicant's submissions that were relevant for the outcome of their decision. Specifically, the Applicant points out that the Report of the Labour Inspectorate, *"which found numerous violations committed by ProCredit Bank"*, was not taken into consideration by the Supreme Court.
26. In respect of his right to work and exercise a profession as well as judicial protection of his rights, the Applicant claims that such violation was allegedly committed by the regular courts when they refused to assess the merits of his claim. According to him, ProCredit Bank *"had not given him the right to appeal"*; therefore, *"in the absence of any other available remedy, he addressed the competent court for the protection of his rights from employment relationship."* By not considering his claims, the Applicant claims that his rights protected by Article 49 and 54 of the Constitution were violated.
27. The Applicant further states that *"[...] the Supreme Court of Kosovo has not considered the case, but was based on the decisions of the first and second instance courts [...]".* The Applicant further states that *"[...] the Executive Agency of the Labor Inspectorate, which clearly and officially emphasizes the irregularities, unlawfulness and injustice of the respondent ProCredit Bank, branch in Gjilan, where it concludes that the respondent ProCredit Bank for termination of the employment relationship of the claimant Enis Beqiri uses a "PHANTOM" paragraph, which does not exist at all, [...] concludes that the right to appeal was denied in the notification."*
28. The Applicant concludes by requesting from the Court to verify that: *"[...] Articles 49 and 54 of the Constitution of the Republic of Kosovo were violated, when the Applicant's [...] basic human rights were violated: the right to work at the moment of the unjust termination of the employment contract and the right to judicial protection of rights when he was not allowed to protect his subjective right guaranteed by the Constitution of Kosovo, the International Convention on Human Rights and applicable laws."*

Comments submitted

29. On 30 January 2015, ProCredit Bank, in its capacity as an interested party, submitted to the Court its comments regarding the allegations raised by the Applicant in his Referral. ProCredit Bank requested that the Court reject as ungrounded the allegations of the Applicant since the *"[...] the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, invoked by the Applicant and at the same time he has not sufficiently substantiated his claim"*.

Admissibility of the Referral

30. In order to be able to adjudicate the Applicant's Referral, the Court has to assess whether the Applicant has met the necessary requirements for admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.

31. The Court notes that the Applicant is an authorized party according to the Constitution; challenges an act of a public authority, namely the Decision of the Supreme Court; has exhausted the necessary legal remedies; and, has submitted his referral within the four (4) months period after receiving the challenged decision.
32. The Applicant has clearly stated specific allegedly violated constitutional rights and freedoms and the challenged act as required by 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”.

33. Further, the Court is to assess whether the Applicant has met the requirement provided in the Rules of Procedure, namely Rule 36 (2), which provide:

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

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

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

34. As mentioned above the Applicant alleges that the Decision (Rev. No. 181/2014, of 8 July 2014) of the Supreme Court was rendered in violation of his “right to fair and impartial trial; right to work and exercise profession; and right to judicial protection of rights” as respectively guaranteed by the Constitution and ECHR. Furthermore, the Applicant also alleges that the Decision (Ac. No. 4275/12, of 18 November 2013) of the Court of Appeal and Decision (C. No. 2505/2010, of 13 May 2011) of the Municipal Court in Prishtina were also rendered in violation of such rights.
35. With regards to his right guaranteed by Article 6 of the ECHR, the Applicant claims that the Supreme Court did not consider his submissions filed under the request for revision. According to the Applicant, if such submissions were to be considered, the outcome of the decision would have been in his favour. Therefore, the Applicant is mainly concerned as to why his submissions in respect of the findings of the Labour Inspectorate were not considered by the Supreme Court.
36. In respect of this particular claim of the Applicant, the Court recalls that the Decision of the Supreme Court confirmed both decisions, that of the Court of Appeal and of the Municipal Court in Prishtina, which had decided that the claim of the Applicant was to be rejected as premature for failing to initiate any

internal appeal procedure within ProCredit Bank. Therefore, the Court notes that all instances of the regular courts have rejected the Applicant's claim based on procedural grounds and without entering into the assessment of the substantive merits of the Applicant's claim. They have made this conclusion based on the fact that the claim of the Applicant was declared impermissible on procedural grounds for his failing to exhaust internal legal remedies that, as a matter of applicable law, he could have used within ProCredit Bank. The regular courts also concluded that ProCredit Bank had no obligation to notify the Applicant of any legal rights that he may or may not have had with respect to his legal dispute with the Bank.

37. In this regard, the Constitutional Court is not in a position to declare that the regular courts violated the Applicant's constitutional rights as alleged by him simply because they did not enter into the merits of his claim. The regular courts have decided not to assess the claims of the Applicant because they considered that he had not exhausted the internal legal remedies provided by law and have reasoned their decisions whilst referring to provisions of the applicable law. The Constitutional Court cannot replace their reasoning in this respect as they are in the best position to interpret the material and procedural law.
38. With regards to his rights guaranteed by Article 49 and 54 of the Constitution, the Applicant claimed that the regular courts wrongly applied the material law when rejecting his claim as inadmissible and premature. He considers that the regular courts should have reviewed the merits of the claim mainly because ProCredit Bank did not provide him "*with a right to appeal*" in the Notification (No. 11-517, of 11 November 2010), through which he was dismissed from work.
39. The Court notes that the above-mentioned Notification did not provide a legal advice, and that this has been the Applicant's main allegation of a violation of his rights committed by the ProCredit Bank. The Applicant has raised this point in all of his submissions before the regular courts and considered that his claim should have been decided on the merits considering that he was allegedly "*mislead*" by ProCredit Bank's lack of legal advice.
40. The Court recalls that, in accordance with Article 113.7 of the Constitution, its primary duty is to review the decision(s) of a public authority, in this particular case those of the regular courts and ascertain whether such decision(s) have been rendered in compliance with the constitutional rights provided therein. It is, therefore, not the duty of the Constitutional Court to review the Notification of the ProCredit Bank and assess the factual situation, as requested by the Applicant.
41. In this respect, the Court notes that the claim of the Applicant has been reviewed by the Municipal Court in Prishtina, the Court of Appeal and the Supreme Court. All these instances have reasoned their decisions referring to the provisions of the law in force when rejecting the Applicant's claim as inadmissible and premature. The regular courts decided that the Applicant's claim was premature and therefore inadmissible because the Applicant failed to appeal the Notification of ProCredit Bank within the institution itself. In this

regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

42. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violations of the law allegedly committed by the Court of Appeal when it rejected his appeal filed against the Decision of the Municipal Court in Prishtina. The Supreme Court stated that: "[...] *the lower instance courts have assessed correctly when they found that the claim of the claimant is inadmissible. [...] In the present case, the claimant did not request the protection of his rights before the competent authority [ProCredit Bank] [...]. [...] due to the fact that the claimant did not request internal legal protection, the lower instance court have correctly applied the provisions of contested procedure, when they found that the claim should be rejected as inadmissible.*"
43. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, Court of Appeal or Municipal Court in Prishtina, unless and in so far as it may have infringed rights and freedoms protected by the Constitution.
44. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of their rights as protected by the Constitution and ECHR.
45. The Court notes that the Applicant had ample opportunities to present his case before the regular courts. The issue of the applicable law has been extensively addressed by all regular courts. The Court of Appeal and the Supreme Court have responded to the claims of the Applicants as to why his claim has been considered as premature and thus inadmissible by the court of lower instance.
46. In this respect, it is important to note that the Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
47. In relation to this, the Court notes that the reasoning referring to the request of the Applicant to review the case on its merits in the Decision of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Municipal Court in Prishtina have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

48. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by the Applicant.
49. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Rules 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rule 36 (2) (b) of the Rules of Procedure, on 18 December 2015, by majority

DECIDES

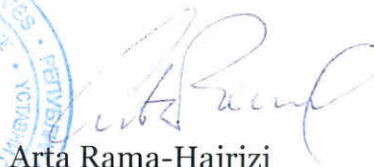
- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Presiding Judge

President of the Constitutional Court



Robert Carolan



Arta Rama-Hajrizi