



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

Prishtina, on 13 June 2016
Ref. No.:RK946/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI88/15

Applicant

Božidar Dimić

**Request for constitutional review of
Judgment AC-I-15-0018 of the Appellate Panel of the Special Chamber of
the Supreme Court on Privatization Agency of Kosovo Related Matters,
of 19 March 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
Bekim Sejdiu, Judge
Selvete Gerxhaliu, Judge
Gresa Caka Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Božidar Dimić, residing in Kraljevo, Republic of Serbia (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment AC-I-15-0018 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter, the Appellate Panel), of 19 March 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 102 [General Principles of the Judicial System] of the Constitution of Kosovo (hereinafter, the Constitution), as well as Article 6 and Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter, the ECHR)

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law on the Constitutional Court of Republic of Kosovo no. 03/L-121 (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 28 June 2015, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 3 August 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 15 February 2016, the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Appellate Panel.
8. On 13 April 2016, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant was an employee of the Socially-Owned Enterprise "Auto Moto Start" (hereinafter, AMS) until 1999.
10. On 31 December 2010, Kosovo Privatization Agency (hereinafter, the KPA) commenced the process of privatization of AMS.
11. On 2 March 2011, the Applicant filed with the KPA a request for compensation and severance payment.

12. On 17 April 2013, the KPA [Decision no. 0060] rejected the Applicant's request as invalid because *"The claimant did not submit sufficient evidence to confirm that he was actively employed at the SOE "AUTO-MOTO START" (in liquidation) pursuant to Article 40.1.6.2 of the Annex of Law No. 04/L-034 on PAK that provides that claimants are entitled to severance payment if "they have become surplus to requirements due to or in relation to the actions undertaken by the Agency [KPA] pursuant to Article 6.1 or 6.2 of the Law on PAK"*
13. The KPA further concluded that *"the claimant did not become surplus to requirements as a consequence of the Ruling on Liquidation in 2011, nor is he allegedly surplus to requirements in relation to the action undertaken by the Agency [...]. In fact at the time the claimant stopped working for the SOE neither PAK nor its predecessor Kosovo Trust Agency had been established yet."*
14. On 18 April 2013, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel) against the Decision [no. 0060] of the KPA.
15. The Applicant maintained in his appeal that *"he is entitled to all rights from the employment relationship and consequently to the right of compensation and severance payment"*.
16. On 4 April 2014, the KPA submitted a reply to the Specialized Panel, stating, *inter alia*, that *"appellant's employment relationship was not ended as a result of any action from the KPA. The appellant did not submit any evidence confirming that he was employed after 1999, or that he received any personal income from the SOE; consequently, the appellant was not an employee of the SOE at the time of privatization and the KPA did not terminate his employment relationship"*
17. On 18 December 2014, the Specialized Panel [Judgment C-IV-13-0701] rejected as ungrounded the Applicant's appeal.
18. The Specialized Panel considered that *"the appellant's claims that he was employed at the SOE until the privatization period and when the KPA terminated his employment relationship are not grounded. The appeal does not provide any evidence that confirms that the appellant was employed at the SOE or that he was on the pay-roll of the SOE at the time of privatization or when the KPA terminated his employment relationship with a notification or Ruling."*
19. On 16 January 2015, the Applicant filed an appeal with the Appellate Panel due to erroneous determination of the factual situation, erroneous application of the substantive law and due to failure to consider the specificities of the Applicant's situation, which led to his discrimination.

20. On 19 March 2015, the Appellate Panel [Judgment AC-I-0018] rejected as ungrounded the Applicant's appeal, *"because the appellant did not submit any evidence pertaining to these claims"*.

Applicant's allegations

21. The Court recalls that the Applicant claims that *"the decisions and the Judgments rendered in this case are extremely tendentious, biased in one part and discriminatory"*
22. The Applicant alleges that the decisions and the Judgments *"in their essence seriously violate the Constitution and the laws, because they are unfair and as such should not exist and produce legal effects."*
23. The Applicant requests the Court *"to annul the Judgment of the Appellate Panel and the Specialized Panel, to approve the Applicant's claim and to remand the case to the court for reconsideration"*.

Admissibility of the Referral

24. The Court first examines whether the Referral meets the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
25. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

"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."

26. In addition, 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".

27. The Court also refers to Rule 36 (1) d) and (2) b) of the Rules of Procedure which foresees:

(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:*

[...]

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

28. The Court also recalls that the Applicant alleges that his rights guaranteed by the Constitution and ECHR were violated as a consequence of the early termination of the employment by the KPA and due to the rejection of compensation and severance payment.
29. The Court notes that the regular courts dealt with Applicant's previous or current employment status and the grounds of his request for compensation and severance payment and they provided a reasoned assessment of the grounds of the Applicant's allegations.
30. In that respect, the Court considers that the regular courts have complied with the fundamental principles of the right to a fair trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
31. That consideration is in conformity with the jurisprudence of the European Court of Human Rights (ECtHR), which held that "*court[s] have a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions (ECtHR, Suominen v. Finland no. 37801, Judgment of 1 July 2003)*".
32. The Court further considers that the regular courts have also addressed the Applicant's allegations that he was a victim of discrimination. In that context, the Appellate Panel in its Judgment [AC-I-0018] concluded that the Applicant could have made his appeal on the basis of discrimination pursuant to Article 10.4 of UNMIK Regulation 2003/13 which, *inter alia*, provides that, "[...] *an employee who does not meet these requirements shall be entitled to 20 % share if it is determined that his/her disqualification was a consequence of discrimination*".
33. Nevertheless, the Court notes that the Applicant did not raise before the KPA and the competent courts the question of inclusion in the final list of employees eligible to the 20 % share of proceeds from the privatization.
34. The Court notes that the Applicant claimed in general that the courts have not taken into consideration the specificities of his case, namely that he was not treated equally. However, the Court considers that a general claim of the Applicant on unequal treatment is not sufficient without indicating any concrete ground of such inequality. Therefore, the Court concludes that the reference by the Applicant to a violation of rights under Article 24 of the Constitution is ungrounded.
35. The Court refers to the case-law of the ECtHR which held that "*discrimination [...] is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*". (See Judgment *Willis v. United Kingdom*, no. 36042/97, para. 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, para. 63., Judgment *D.H. and others v. Czech Republic*, para. 44).
36. The Court finds that the alleged violation of the rights under Article 1 of Protocol 1 of ECHR is ungrounded, as the Applicant has not succeeded to realize his claim of "*legitimate expectations*" with respect to his claim for

compensation and severance payment cannot of itself present a valid ground justifying the allegations of a violation.

37. The Court considers that Article 1 of Protocol 1 only protects existing property and not the right to acquire property in the future. According to that viewpoint, the legitimate expectation of any “property”, “assets” or “compensation of damage”, must be based on a legal provision or a legal act having a valid legal basis and affecting the property rights. (See Case *Peter Gratzinger and Eva Gratzingerova v. Czech Republic*, European Court of Human Rights Decision of 10 July 2002, no. 39794/98, para. 69).
38. Nonetheless, the Court finds that the challenged judgments were rendered by courts established by the Constitution and law, pursuant to the principle of Article 102 (General Principles of the Judicial System) of the Constitution, which the Applicant cited as a violation. The courts, within the limits of their competences, have conducted the proceedings based on the law, thereby giving constitutionally-accepted reasons for such proceedings.
39. The Court emphasizes that the Applicant’s disagreement with the outcome of his case cannot of itself raise an arguable claim of a violation of constitutional provisions. (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR Judgment of 26 July 2005).
40. The Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and the ECHR. (See Case no. KI19/14 and KI21 14, Applicants *Tafil Qorri and Mehdi Sylá*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013 of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013 of the Court of Appeal of Kosovo, of 5 December 2013 1947/2013, of 5 December 2013).
41. The Court further reiterates that it is not its duty 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 v. Spain*, No. 30544/96, ECHR Judgment of 21 January 1999; see also case KI70/11 Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court Resolution on Inadmissibility of 16 December 2011).
42. In conclusion, the Court finds that the Applicant’s Referral does not meet the admissibility requirements because the Applicant has not demonstrated in his Referral that the challenged decision violates his rights guaranteed by the Constitution and the ECHR.
43. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is inadmissible, in accordance with Rule 36 (1) (d) and 2 (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, on 13 April 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO NOTIFY the Parties of this Decision;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi