



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

Prishtina, on 14 March 2016
Ref. No.:RK904/16

RESOLUTION ON INADMISSIBILITY

in

Joined Cases No.
KI102/15 and KI115/15

Applicants

Ilmi Gashi and Naser Raçi

Constitutional review of Judgments of the Supreme Court
Rev. No. 76/2015 dated 2 April 2015 and Rev. No 89/2015 dated 15 April
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 and
Bekim Sejdiu, Judge

Applicants

1. The Referral KI102/15 was submitted by Mr. Ilmi Gashi while Referral KI115/15 was submitted by Mr. Naser Raçi (hereinafter: the Applicants).

Challenged decision

A. As to Referral KI102/15

2. The Applicant challenges the Judgments of the Supreme Court Rev. No. 76/2015 of 2 April 2015.

B. As to Referral KI115/15

3. The Applicant challenges the Judgments of the Supreme Court Rev. No 89/2015 of 15 April 2015 served to the Applicant on 2 June 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Decisions which allegedly “*denies the right to Article 49 of the Constitution*”.

Legal basis

5. The Referrals are based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 28 July 2015 the Applicant Ilmi Gashi submitted the Referral to the Court.
7. On 9 September 2015 the Applicant Naser Raçi submitted the Referral to the Court.
8. On 19 August 2015 the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
9. On 1 October 2015 the Court sent a copy of the Referral KI102/15 to the Supreme Court.
10. On 20 October 2015 the Court sent a copy of the Referral KI115/15 to the Supreme Court.
11. On 25 November 2015 the President of the Court, ordered the joinder of the Referral KI115/15 to the Referral KI102/15. By this order, it was decided that the Judge Rapporteur and composition of the Review Panel be the same as it was decided by Decision No. KSH. KI102/15.
12. On 26 November 2015 the Court notified the Applicants and the Supreme Court of the joinder of the Referrals.
13. On 22 December 2015 after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

A. As to Referral KI102/15

14. On an unspecified date in 2005 the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicant's request for pension under category "A" (Decisions no. 45) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
15. The abovementioned decisions determined that the payment of the pension for the Applicant will be for a fixed period of five (5) years (1 April 2005 and end on 1 May 2010), while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.
16. According the submitted documents, no appeal was filed against this decision by the Applicant.
17. As specified in the agreement, KEK terminated the payment of the pension of the Applicant after end date.
18. On an unspecified date the Applicant submitted a claim before the Basic Court in Prishtina.
19. On 13 May 2013 the Basic Court in Prishtina (Judgment C. no. 1021/2010) rejected as ungrounded the claims submitted by the Applicant. The Basic Court found that "KEK has fulfilled compensation as specified in the agreement and that no appeal was filed when the agreement was signed".
20. The Applicant submitted an appeal to the Court of Appeal in Prishtina against the judgment of the Basic Court.
21. On 26 February 2014 the Court of Appeal (Judgment AC. no. 3925/2013) rejected as ungrounded the appeal and upheld the judgment of the Basic Court holding that:

"Since in the agreement concluded between the Claimant and the Respondent, in the Article of this agreement was foreseen that this agreement shall start from 01.04.2005 and will end after the payment of 60 months, which ends on 01.05.2010, this payment was foreseen by Article 2.1, item a) of the agreement, namely the Disability and Deceased Pension Fund Statute of the Kosovo Energy Corporation, on 01.11.2002. By this, it results that the Respondent fulfilled its obligation based on the abovementioned agreement, namely Decision no. 45, of 24.03.2005, in which decision was exactly determined the date when the payment of the pension starts on 01.04.2005 and ends on 01.05.2010, it was also exactly determined when it will be interrupted to the beneficiary of this pension, at the abovementioned date. The amount of the pension was determined at the amount of 105 Euros. The party dissatisfied could have filed an appeal against this decision but the Claimant did not use such a right. Therefore,

the first instance court has correctly rejected the statement of claim of the Claimant as ungrounded”.

22. The Applicant submitted a request for revision to the Supreme Court of Kosovo.
23. On 2 April 2015 the Supreme Court (Judgment Rev. no. 76/2015) rejected as ungrounded the Applicant’s request for revision.
24. The Supreme Court stated:

“The Supreme Court of Kosovo, approved the reasoning of the judgment of the lower instance courts as fair, since the Claimant, by himself, has applied for the pension, which request was approved based on the UNMIK Regulation 2001/35 and the Pension Fund Statute of the KEK, and based on these facts the Respondent notified the Claimant by Decision no. 45, of 24.03.2005, about the concrete conditions of the pension. By the abovementioned decision of the Respondent, it was determined that the payment of the pension starts on 01.04.2005 and ends on 01.05.2010, at the monthly amount of 105 €. The Claimant could have filed an appeal against this decision with the Committee for dispute review through the administration of the Pension Fund, but he did not file any appeal and received the pension until 01.05.2010. This court considers that the Claimant agreed to transform his employment relationship into another legal relationship, while the statements of the Revision that in the meantime the Claimant became able to work but his reinstatement to the job position was not accepted and the payment was not continued. The Supreme Court reviewed it but it did not have any impact to decide differently, since in the decision of the Respondent was mentioned that (this decision replaces all up to now acts signed between KEK and the user). This court considers that the Respondent has fulfilled its obligation to the Claimant, since it acted in conformity with the abovementioned decision, which was not challenged by the Claimant. Article 11.1, item (b) of the Essential Labor Law in Kosovo provides that the labor contract shall terminate by a written agreement between the employee and the employer”.

B. As to Referral KI115/15

25. On an unspecified date in 2004 the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicant’s request for pension under category “A” (Decisions no.140) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
26. The abovementioned decisions determined that the payment of the pension for the Applicant will be for a fixed period of five (5) *years (1 July 2004 until 1 August 2009)*, while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.
27. According the submitted documents, no appeal was filed against this decision by the Applicant.

28. As specified in the agreement, KEK terminated the payment of the pension of the Applicant after end date.
29. On an unspecified date the Applicant submitted a claim before the Basic Court in Prishtina.
30. On 27 February 2012 the Basic Court in Prishtina (Judgment C. no. 1333/2011) rejected as ungrounded the claims submitted by the Applicant. The Basic Court found that *“KEK has fulfilled compensation as specified in the agreement and that no appeal was filed when the agreement was signed”*.
31. The Applicant submitted an appeal to the Court of Appeal in Prishtina against the judgments of the Basic Court.
32. On 11 November 2014 the Court of Appeal (Judgment AC. no. 5267/2012) rejected as ungrounded the appeal and upheld the judgment of the Basic Court holding that:

“The first instance court correctly assessed that the claimant entered into early retirement as a disabled category 3, at his request, who had been allowed by decision of the respondent no. 140/53 of 13.07.2004, based on UNMIK Regulation no. 2001/35 and the Statute of Pension Fund of the respondent, the provided payment of pension paid in monthly amount of 105.00 euro for five years, starting from 01.07.2004 and ended on 01.08.2009. This decision had a legal remedy and the dissatisfied party may file an appeal against it, which the claimant never did, which means that he agreed with the abovementioned decision in all its parts, and as far as the time of retirement and the amount of the pension, this decision became final and was implemented in details by the respondent, which has fulfilled its obligation to pay the claimant for a period of 5 years, therefore, the first instance court found that the claimant lacks a legal basis for the approval of his statement of claim, with which agrees this court too, as the second instance court”.

33. The Applicant submitted a request for revision to the Supreme Court of Kosovo.
34. On 15 April 2015 (Rev. no. 89/2015) the Supreme Court rejected as ungrounded the Applicant’s request for revision.
35. The Supreme Court stated:

“The subject matter in the revision were the allegations of the revision that the lower instance courts did not treat the claimant’s matter equally with the cases of other parties, although with regard to the same factual and legal situation there is a judgment of the Constitutional Court also for 26 former employees of the respondent, whose request was approved. The Supreme Court finds that these allegations of the revision are not grounded, due to the fact that the Judgment of the Constitutional Court, in which the claimant was referred in the revision, does not refer to the constitutional matter which the claimant initiated before the court, but the

latter has to do with a situation where relationship between the respondent and a number of workers is regulated by a special agreement, according to which the respondent was obliged to pay this monthly payment of 105 euro until the establishment of the Pension Fund of Kosovo, whereas in the present case the relationship between the claimant and the respondent is regulated by a decision of the respondent, which was rendered based on the claimant's application for early retirement and by the same decision was approved the claimant's application for early retirement for a definite time period of 5 years and the respondent under this decision fulfilled its obligation to pay the abovementioned pension. By the same decision it was not provided the continuation of these payments after the expiry of 5 years, as it is specified in the abovementioned decision. The claimant was aware of the duration of the pension, specified in the decision, however, he accepted these conditions of the payment of this pension and he did not appeal the decision. For these reasons, the Supreme Court approves in entirety as grounded, the legal stance of the first instance courts, according to which the respondent without any decision, agreement, a regulations, or any internal legal act, or without any legal basis respectively, is not obliged to continue to pay the claimant the payment of early pension as long as he does not turn 65, which is provided by law".

Applicants' allegations

36. The Applicants claims that the challenged Judgments of the Supreme Court of Kosovo "*violates their right to work guaranteed by the Constitution of the Republic of Kosovo*".
37. The Applicants allege that "*they were informed that in cases where the disabled pensioner is rehabilitated they have the right of returning to work*".
38. In addition, the Applicants requests from the Constitutional Court to "*annul the Judgments of the lower Courts and order that the Applicants be returned to work*".

Admissibility of the Referral

39. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements.
40. 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.

41. The Court also takes into account Rule 36 (2) d) of the Rules of Procedure, which foresees:

(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;

42. In this respect, the Court notes that the Applicants have not substantiate a claim on constitutional grounds and have not provided evidence proving that their fundamental rights and freedoms have been violated by the regular courts.
43. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
44. The Court notes that the Supreme Court sufficiently reasoned its Judgments and thus 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).
45. The Court recalls that in the other KEK cases referred to by the Applicants (e.g. KI40/09) it was adjudicated regarding the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that the current Referrals KI102/15 and KI115/15 differ from the afore-mentioned cases (e.g. KI40/09). In fact, in these cases, KEK and former employees signed an agreement on temporary compensation until the establishment of the Kosovo Invalidity Pension Fund, thus with a reference to a uncertain date; while, in the current cases KI102/15 and KI115/15, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date.
46. The Court considers that the Applicants did not clarify why and how their rights to work guaranteed by Article 49 of the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
47. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain [GC]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
48. Therefore, pursuant to Rule 36. (2).d) of the Rules of Procedure, the Referrals are manifestly ill-founded and thus are inadmissible.

FOR THESE REASONS

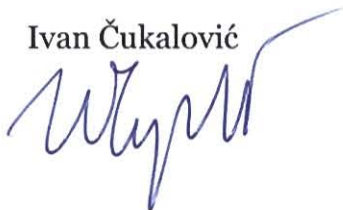
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) d) of the Rules of Procedure and Rule 56 (2) of the Rules of Procedure, on 22 December 2015, unanimously

DECIDES

- I. TO REJECT the Referrals 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. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

