



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

Prishtina, on 6 February 2017
Ref. no.:RK 1035/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI113/15

Applicant

Ramë Ramaj

**Constitutional review of Judgment Rev. no. 80/2014, of the Supreme
Court of the Republic of Kosovo, of 14 April 2014**

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 Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Ramë Ramaj (hereinafter: the Applicant), residing in Ferizaj.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 80/2014 of the Supreme Court of 14 April 2014 (hereinafter: the challenged decision), regarding the lawsuit initiated by him for an administrative conflict.
3. The challenged decision was served on the Applicant on 7 August 2015.

Subject matter

4. The subject matter is a request for constitutional review of the challenged decision of the Supreme Court, which allegedly violates Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments] and Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

6. On 1 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 October 2015, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu (member) and Arta Rama-Hajrizi (member).
8. On 13 November 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Court requested the Basic Court in Ferizaj to submit a copy of the acknowledgment of receipt by the Applicant of the final decision.
9. On 14 September 2016, the Review Panel considered the report of the Judge Rapporteur and recommended to the full Court to declare the Referral inadmissible as manifestly ill-founded.

Summary of facts of the case

Facts related to the administrative proceedings

10. On 3 January 2006, the Applicant signed an employment contract with the Municipal Department for Health and Social Welfare (the Employer) of Ferizaj as a security guard with the Main Centre of the Family Medicine in the town.

11. On 15 November 2006, the Employer notified the Applicant about the non-extension of his employment contract.
12. On an unspecified date, the Applicant filed a complaint with the Complaints Committee of the Municipality of Ferizaj (hereinafter: CCMF Ferizaj).
13. On 12 January 2007, the CCMF Ferizaj with Decision no. 07/8638-08 rejected the Applicant's appeal as ungrounded.
14. The Applicant filed an appeal against the Decision with the Independent Oversight Board for Civil Servants of Kosovo (hereinafter: IOBCSK).
15. On 30 March 2007, the IOBCSK rejected as ungrounded the Applicant's appeal and upheld the decision of the CCMF Ferizaj.

Facts related to the judicial proceedings

16. The Applicant filed a lawsuit for administrative conflict against the decision of the IOBCSK with the Supreme Court.
17. On 18 July 2007, the Supreme Court rejected the Applicant's claim and forwarded the case to the Municipal Court in Ferizaj to decide as a competent court.
18. On 18 September 2012, the Municipal Court in Ferizaj (Decision C. no. 548/07) rejected the Applicant's claim as being filed out of the legal time limit.
19. The Applicant appealed the Decision in the Court of Appeal in Prishtina.
20. On 30 December 2012, the Court of Appeal by Decision Ac. no. 4753/12 declared the Applicant's appeal as partly admissible. It modified the decision of the first instance court regarding the application of the substantive law. Finally, the abovementioned Court decided to dismiss in entirety the Applicant's lawsuit as out of time.

Facts related to the extraordinary legal remedy

21. On an unspecified date, the Applicant filed request for revision with the Supreme Court.
22. On 14 April 2014, the Supreme Court by Decision Rev. no. 80/2014 rejected the Applicant's request for revision as ungrounded and upheld the Decision of the Court of Appeal.
23. Furthermore, the Supreme Court reasoned the following:

"In the present case, the claimant filed the claim with the court after the time limit foreseen by the abovementioned laws because the claim was filed with the court on 22 May 2007, and he received the final decision on 11 April 2007.

According to the assessment of the Supreme Court, the lower instance courts have correctly applied the provision of Article 83 of the Law on Basic Rights from Employment Relationships, because this time limit is preclusive and after its expiry, the employee loses his right to judicial protection, therefore the claim filed after this time limit must be rejected as out of time, therefore the Supreme Court of Kosovo considers that the decision of the second instance court is fair and lawful.”

Applicant’s allegations

24. The Applicant alleges that his constitutional rights guaranteed in Chapter II, namely Articles 21, 22 and 24 of the Constitution were violated.
25. The Applicant alleges, among other things, that the first instance and the second instance courts rendered decisions contrary to the provisions of Article 224 of the Law on Associated Labor, because of erroneous interpretation of the provisions of this law.
26. The Applicant requests the Court to declare his Referral as grounded and to annul the decisions of all the courts related to his case, including the administrative decisions.

Admissibility of Referral

27. The Court will examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
28. Firstly the Court refers to Article 113.7 of the Constitution which stipulates:

“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.”

29. The Court further 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.”

30. The Court takes also into account Rule 36 (1) (d) and Rule 36 (2) (b) of the Rules of the Procedure which provide:

“(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.*”

31. The Court notes that the Applicant alleges violation of Article 21, 22 and 24 of the Constitution. He considers that these constitutional violations stem from the rejection of the regular courts to review the lawsuit for administrative conflict.
32. In relation to these allegations the Court notes that the different regular court instances, including the Supreme Court, that dealt with the Applicant’s case , rejected his lawsuit for administrative conflict as ungrounded based on procedural reasons, namely submission of the abovementioned lawsuit after the legal deadline of 30 (thirty) days.
33. Moreover, the Court notes that the Applicant only mentions the constitutional provisions guaranteed in Chapter II of the Constitution, without substantiating how these provisions were violated in his case, as it is required by Article 48 of the Law.
34. In addition, the Applicant alleges that the regular courts interpreted erroneously the provisions of the substantive law, namely Article 224 of the Law on Associated Labor.
35. In this regard, the Court reiterates that such an allegation is of a legality nature and legality issues are in the domain of the regular courts.
36. The Constitutional Court notes 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. It is their role to interpret and apply pertinent rules of procedural and substantive law (See, *case Garcia Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
37. It is the jurisdiction of the Court to consider whether the proceedings in general before the regular courts were correct and fair in their entirety (see, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
38. The mere fact that the Applicant is dissatisfied with the outcome of his case cannot of itself raise an admissible and justifiable claim for breach of his rights, protected by the Constitution and ECtHR.
39. In these circumstances the Court considers that the facts presented by the Applicant do not indicate in any way that the regular courts denied him the rights guaranteed by the Constitution, namely Articles 21, 22 and 24 of the Constitution.

40. Therefore, the Referral is manifestly ill-founded on constitutional grounds, and is to be declared inadmissible in accordance with Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20, and 48 of the Law and Rules 36 (1) (d) and 36 (2) (b), and 56 (2) of the Rules of Procedure, on 6 February 2017, 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;
- IV. This Decision is effective immediately.

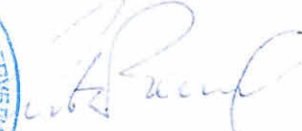
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi