



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

Prishtina, on 5 January 2015
Ref. no.: RK744/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI114/14

Applicant

Adem Hoti

**Constitutional review of the Decision Rev. no. 127/2014 of the Supreme
Court of the Republic of Kosovo, of 12 May 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Adem Hoti, with permanent residence in Podujeva.

Challenged decision

2. The Applicant challenges the Decision Rev. no. 127/2014 of the Supreme Court of the Republic of Kosovo, of 12 May 2014 (hereinafter: the Supreme Court), by which the revision filed by the Applicant against the Decision Ac. no. 3661/2013 of the Court of Appeal of the Republic of Kosovo, of 28 February 2013 (hereinafter: the Court of Appeal) was rejected as inadmissible.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision Rev. no. 127/2014 of the Supreme Court, of 12 May 2014. The Applicant alleges that by this Decision of the Supreme Court, his rights guaranteed by Article 3.2 and 113.7 of the Constitution were violated.

Legal basis

4. The legal basis for this case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 22 and 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

5. On 4 July 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 August 2014, the President of the Court by Decision No. GJR. KI114/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI114/14, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani.
7. On 22 August 2014, the Court notified the Applicant on the registration of Referral. On the same date, a copy of the Referral was sent to the Supreme Court.
8. On 8 December 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 30 January 2013, in the Basic Court in Prishtina, Branch in Podujeva the Court Settlement C. no. 433/11, was concluded between the Applicant and the Municipal Directorate of Education in Podujeva (hereinafter: the MDE in Podujeva), for systematization of the Applicant in the payroll system for the school year 2013/2014. In the court settlement it is stated that the MDE in Podujeva is obliged to pay to the Applicant the personal income for the months July, August, September, October, November, December and January in the amount of 215.90 €, in total 1295.40 €. The unpaid salaries according to the court settlement should be paid by the MDE in Podujeva to the Applicant in

February 2013, while the contract on deed will be extended by 30 June 2013. The MDA in Podujeva was also obliged to exploit all of the opportunities, that at the beginning of the school year 2013-2014, to systemize the Applicant in the payroll system.

10. On 1 October 2013, the Applicant filed a proposal for granting execution of the Court Settlement C. no. 433/11 of the Basic Court in Prishtina, Branch in Podujeva, alleging that the Court Settlement C. no. 433/11 concluded between him and the MDE in Podujeva was not fully implemented by the MDE in Podujeva.
11. On 8 November 2013, the Basic Court in Prishtina, Branch in Podujeva (Decision CP. no. 439/13) rejected the proposal for allowing the execution filed against MDE in Podujeva.
12. Furthermore, the Basic Court in Prishtina, the Branch in Podujeva concluded:

"[...] From the employment contract signed for fixed term (service agreement), is determined that the claimant – creditor had a contract from 01.06.2013 until 31.08.2013, therefore due to the nature of such a contract this could have not been extended by the debtor after the time limit expired, on 31.08.2013, and the respondent – debtor, the Directorate for Education Culture And Science of Municipality of Podujeva, was not obliged to extend it if it did not need employees in that working place.

Setting from such a situation, the court is of opinion that the creditor has no right to this; therefore the proposal is rejected as ungrounded. However, if the claimant considers that his rights were violated, he can seek recognition in a regular civil contest and not in this executive procedure according to the submitted proposal and based on the court settlement which has been concluded between the parties".

13. On 12 November 2013, the Applicant filed an appeal against the first instance court decision with the Court of Appeal in Prishtina. The Applicant's appeal is based on violation of procedural provisions, namely Article 182.1 item (n) of the Law on Contested Procedure, erroneous and incomplete determination of factual situation and erroneous application of the material law, namely the Law on Executive Procedure (LEP), no. 03/L-008.
14. On 12 May 2013, the Court of Appeal in Prishtina (Decision, AC. no. 3661/13) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the first instance court. The said court concluded that the first instance court has determined factual situation correctly and completely and applied correctly the material law.
15. On 19 March 2014, the Applicant filed revision against the Decision of the Court of Appeal with the Supreme Court, due to violation of the contested procedure provisions and erroneous application of the material law.
16. On 12 May 2014, the Supreme Court (Decision, Rev. no. 127/2014), rejected as inadmissible the revision filed by the Applicant, for the following reasons:

“Setting from such a state of the matter, and pursuant to Article 68, paragraph 1 of the Law on Executive Procedure, the Supreme Court of Kosovo found that pursuant to the abovementioned provision of the law, the revision of the creditor in this legal matter against the final decision in the executive procedure is not allowed”.

Applicant’s allegations

17. Applicant feels discriminated against because the MDE and the regular courts violated his rights guaranteed by Article 3.2 of the Constitution and Article 113.7 of the Constitution, because the Supreme Court rejected the revision as inadmissible.
18. The Applicant also claims that regular courts unfairly rejected his proposal for execution, by which he requested to be systemized in the payroll system for the school year 2013/2014, as of the beginning of the school year, in accordance with the Court Settlement C. no. 433/11, of 30 January 2013.
19. The Applicant addresses the Court, by these requests, we cite: *“to be assigned to the working place of a teacher of technical education, of a class teacher or of a librarian, in a primary or in a secondary school, or as an assistant to the school janitor in the Economic Secondary School “Isa Boletini” in Podujeva”.*

Admissibility of the Referral

20. The court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
21. 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”.
22. In addition, Rule 36 (1) d) of the Rules of Procedure, provides:

*“(1) The Court may consider a referral if:
[...]
(d) the referral is prima facie justified or not manifestly ill-founded.”*
23. Moreover, Rule 36 (2) of the Rules of Procedure provides:

(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.

24. In this case, the Court notes that the Applicant alleges that the employer MDE in Podujeva and the regular courts have violated his rights guaranteed by Article 3.2 of the Constitution, due to the fact that they rendered unfair decisions, and by Article 113.7 of the Constitution, because of the rejection of the revision as inadmissible by the Supreme Court.

25. Regarding the alleged violation of Article 3.2, the Court refers to this constitutional provision, which provides:

Article 3.2.: "The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

26. Regarding this allegation, the Court considers that the Applicant has not substantiated in any way, how and why, the first and second instance court violated his right guaranteed by this specific provision of the Constitution, while he was provided all opportunities to present facts, raise arguments and object the argument of the opposing party.

27. The Applicant also alleges that the Supreme Court violated his right guaranteed by Article 113.7 of the Constitution, because it did not approve the revision filed against the judgment of the Court of Appeal.

28. In this respect, the Court notes that the allegation of violation of this provision of the Constitution, filed by the Applicant has nothing to do with the possibility of filing an appeal or request before the regular courts or denial of these remedies by the latter, but the possibility that individuals, citizens of the Republic of Kosovo, challenge the decisions of the regular courts before the Constitutional Court for violation of the rights guaranteed by the Constitution, under a condition that they prove that they have exhausted all legal remedies provided by applicable laws in the Republic of Kosovo.

29. In addition, from the case file, the Court notes that the final decision on the Applicant's case, under applicable law, is the Decision Ac. no. 3661/13 of the Court of Appeal, which upheld the Decision of the first instance court, CP. no. 439/13 of 8 November 2013, regarding the Applicant's proposal for the execution of the Court Settlement, C. no. 433/11, of 30 January 2013.

30. But it is clear that the Applicant is dissatisfied with the outcome of the decision of the Court of Appeal, rendered in the executive procedure and that he has tried to realize his claims before the Supreme Court, which has rejected the revision as inadmissible because of procedural reasons (see reasoning of the Supreme Court in paragraph 16 of this document).

31. The Court recalls that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of constitutional provisions (see *mutatis mutandis* ECHR Judgment Appl. No. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, or the Resolution of the Constitutional Court, case KI128/12, of 12 July 2013, Applicant *Shaban Hoxha*, the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).
32. The Court reiterates that it is not a fact finding court and it does not adjudicate as a court of fourth instance. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the Applicant's employment was terminated in lawful or unlawful manner, because this is a jurisdiction of the regular courts. For the Court the essential are those issues, upon which existence depends the assessment of possible violations of the rights guaranteed by the Constitution (constitutionality) and not clearly legal issues (legality) (See, *mutatis mutandis, i.a., Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
33. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegations of violation of the rights, guaranteed by the Constitution.
34. Therefore, the Court concludes that the Applicant's Referral, in accordance with Article 48 of the Law and Rule 36 (1) d) of the Rules of Procedure, is manifestly ill- unfounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (1) d), 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 8 December 2014, 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

President of the Constitutional Court



Altay Suroy



Prof. Dr. Enver Hasani