



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

Prishtina, 24 November 2014
Ref. no.: RK 733/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI117/14

Applicant

Kurtesh Halimi

**Constitutional review of the Judgment Ac. no. 543/2013,
of the Court of Appeal of Kosovo, of 16 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. Kurtesh Halimi from village Dobratin, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Ac. no. 543/2013, of the Court of Appeal of the Republic of Kosovo, of 16 May 2014, which was served on him on 2 July 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment Ac. no. 543/2013, of the Court of Appeal, by which according to Applicant's allegations *"the benefits that derive from the right to pension were denied"*.

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo, Article 49 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 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 9 July 2014, the Applicant submitted 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. KI117/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI117/14, appointed Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 25 August 2014, the Court notified the Applicant of the registration of Referral and sent a copy of the Referral to the Court of Appeal.
8. On 5 November 2014, after having considered the report of Judge Rapporteur Ivana Čukalović, the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. On 12 November 2012, the Municipal Court in Podujeva by Judgment C. no. 443/10 approved partly the Applicant's statement of claim. *"[...] In paragraph II of the enacting clause the respondent Municipality of Podujeva-Directorate of Education is obliged to pay in the name of two jubilee awards the amount of €567,22 and in the name of two retirement benefits the amount of €567,22, the total amount of €1.134,44 with annual legal interest rate of 3.5 %, starting from the day the judgment was served on 12.11.2012 until the final payment and in the name of the costs of proceedings the amount of €98, within the time limit of 15 days from the day the judgment was served under the threat of forced execution.*

By the same judgment in paragraph III of the enacting clause is rejected the claimant's statement of claim for the adjudicated amount in the name of retirement benefit, a salary in the amount of €283,61 [...]

10. On unspecified date, the Municipality of Podujeva filed an appeal with the Court of Appeal of Kosovo against the Judgment C. no. 443/10, of the Municipal Court of Podujeva.
11. On 16 May 2014, the Court of Appeal of Kosovo in Prishtina by Judgment Ac. no. 543/2013, approved as grounded the appeal of the Municipality of Podujeva and modified Judgment C. no. 443/10 of the Municipal Court in Podujeva, of 12.11.2012, in that way:

“REJECTED in entirety as ungrounded the statement of claim of the claimant Kurtesh Halimi from Podujeva, by which he requested to oblige the respondent Municipality of Podujeva- Directorate for Education that the claimant to pay in the name of two jubilee awards the amount of €567,22 and in the name of two retirement benefits the amount of 567,22 €, the total amount of €1.134,44 with legal interest rate of 3.5 % per year, starting from the day the judgment was served on 12.11.2012 until the final payment and in the name of the costs of proceedings the amount of €98, within the time limit of 15 days from the day the judgment was served under the threat of forced execution”.

Applicant's allegations

12. The Applicant does not specify what Articles of the Constitution of Kosovo have been violated by this Judgment, but he stated the following: *“The Collective Contract, signed by the representative of the Government of Kosovo, has not been implemented. The Municipality of Prishtina makes payment of these benefits and awards without filing claim, while this does not happen in the case of the Municipality of Podujeva”.*
13. The Applicant requests from the Constitutional Court the following: *“I want to achieve the payment of these retirement benefits, since I have worked hard and gave my contribution in raising the education awareness in the education system in Kosovo. Logically, I have deserved better treatment after all this work, to finalize our work in education”.*

Admissibility of the Referral

14. The Court observes that, in order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
15. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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”.

16. Article 48 of the Law 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.”

17. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

...

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

18. As to the Applicant’s allegations regarding non-implementation of the Collective Contract and the request for payment of jubilee awards, the Constitutional Court reiterates that it is not a regular court when reviewing the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1]).

19. The Judgment Ac. no. 543/2013 of the Court of Appeal of Kosovo, of 16 May 2014, in its reasoning provides detailed explanation and response to all Applicant’s allegations in his statement of claim and the reasons for the application of the relevant rules of procedural and substantive law, with the reasoning:

“Since the claimant acquired the right to the retirement pension on 01.04.2009 at the time when the Regulation on Pension in Kosovo was in force, by which is not provided in any of its articles the payment of the retirement benefit, whereas Article 35 of the same Regulation provides that this Regulation shall supersede any provision in the applicable law which is inconsistent with it”.

20. The Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Court on admissibility, Application no. 53363/, of 31 May 2005). The Applicant does not state what articles of the Constitution were violated and in what manner they support his Referral, as it is required by Article 113.7 of the Constitution and Article 48 of the Law.

21. The Applicant alleges that his rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, by not clearly indicating how these decisions violated his constitutional rights.

22. The Court further notes 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 the Constitution (see, *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
23. In the present case, the Applicant was provided opportunities to present his case and challenge the interpretation of the law, which he considers as being incorrect, before the Court of Appeal of Kosovo in Prishtina. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
24. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.
25. It follows that the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 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 Rule 36 (2) b) of the Rules of Procedure, in the session held on 5 November 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

Ivan Čukalović

President of the Constitutional Court

Prof. Dr. Enver Hasani

