



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 5 December 2016
Ref. No.:RK1013/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI117/15

Applicant

Rexhep Llapashtica

**Constitutional review of Judgment Rev. no. 269/2014, of the Supreme
Court of Kosovo, of 29 January 2014**

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
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Rexhep Llapashtica from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. no. 269/2014 of the Supreme Court of Kosovo, of 29 January 2014 (hereinafter: the Supreme Court), which was served on him on 27 May 2015.

Subject matter

3. The subject matter is the constitutional review of Judgment (Rev. no. 269/2014) of the Supreme Court, which allegedly violated the Applicant's rights guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitutional) and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

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

Proceedings before the Constitutional Court

5. On 21 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 October 2015, the President of the Court, by Decision no. GJR. KI117/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI117/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Artë Rama-Hajrizi.
7. On 2 November 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 24 December 2015, the Court requested the Basic Court in Prishtina to submit the acknowledgment of receipt, indicating the date when the Decision (Rev. no. 269/2014) of the Supreme Court, of 29 January 2014 was served on the Applicant.
9. On 29 December 2015, the Basic Court in Prishtina submitted the acknowledgment of receipt requested by the Court.
10. On 8 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. The Applicant had been employed in the Municipality of Prishtina, Directorate for Planning, Reconstruction and Development. The Administrative Board as a part of the Employer, in accordance with Regulation No. 1999/11 of the United Nations Mission in Kosovo (hereinafter: UNMIK), appointed the Applicant in the professional workplace 2, with 5:00 coefficient of personal income for January and February 2000.
12. On 22 March 2000, the Applicant filed an objection No. 05-120-89 with the Employer against the determination of 5.00 coefficient of personal income.
13. On 9 May 2000, since the Applicant did not receive any response from the Employer, he filed a statement of claim with the Municipal Court in Prishtina, requesting that unfair actions of the Employer be annulled, and that the coefficient 7.5 be assigned, from 1 January 2000, as well as the unpaid difference.
14. From 12 October 2000 until 29 June 2005, the Municipal Court decided twice on the matter of the dispute initiated by the Applicant (C. no. 15/2000 and C1. No. 324/2001) and the District Court has twice quashed those decisions by remanding the case for retrial (decisions Ac. no. 28/2000 and Ac. no. 322/2003).
15. On 31 October 2012, the Municipal Court in Prishtina in the retrial proceedings of the case by Judgment C1. No. 273/05 approved the Applicant's claim as grounded. *"Based on this ascertained factual situation, it is found that in the present case we are dealing with the difference of the personal income which the Claimant would have realized if he had been paid based on coefficient of 7.5, for the 01 May 2000 – 31 December 2008 period, and the financial expertise report was fully trusted and considered as basis for determining the amount of the difference of salaries, because it was compiled and written in a correct, detailed, and concise manner."*
16. On an unspecified date, the Employer filed an appeal with the Court of Appeal against Judgment C1. No. 273/05 of the Municipal Court, due to erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
17. On 4 March 2014, the Court of Appeal by Judgment CA. No. 2269/2013 approved the appeal of the Employer and modified Judgment C1. No. 273/05 of the Municipal Court, so that it rejected as ungrounded the Applicant's statement of claim.
18. The Court of Appeal in its Judgment reasoned as it follows: *"Based on the fact that the salary of the Claimant was determined by the Respondent's relevant bodies, nobody, including the expert, cannot set the coefficient of the salary, especially if this finding is based on no valid legal act of the Respondent. Therefore, based on the findings of this Court, no difference in salary, for the abovementioned period, belongs to the Claimant, which was determined by*

the finding of the expert, because the employee is entitled only to the salary of the amount contracted by the employment contract.”

19. The Applicant filed a request for revision to the Supreme Court, against the Judgment (CA. no. 2269/2013) of the Court of Appeal, because of violation of the contested procedure provisions and erroneous application of the substantive law.
20. On 29 January 2014, the Supreme Court by Judgment (Rev. No. 269/2014) rejected as ungrounded the Applicant's request for revision and reasoned that the Court of Appeal “[...] *made a fair assessment when it found that the statement of claim of the claimant on the payment of the compensation of the difference for the monthly salaries of a 5.00 coefficient to 6.00 coefficient, for January, February, March, and April of 2000, and of a coefficient of 6 to 7.50, as of May, is ungrounded, because the salary of that month has been paid to the Claimant based on the categorization of job position, which was applicable at that time [...]*”.

Applicant's allegations

21. The Applicant alleges that by Judgment (Rev. No. 269/2014), of the Supreme Court and by Judgment (CA. no. 2269/2013) of the Court of Appeal were violated the guaranteed rights as referred to in paragraph 3 of this document.
22. Moreover, the Applicant requests the Court that the Judgment (C1. No. 273/05) of the Municipal Court, by which was approved the Applicant's claim as grounded, be implemented.

Admissibility of the Referral

23. The Court first examines whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
24. 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.”
25. The Court also mentions 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”.
26. The Court, also, refers to Rule 36 of the Rules of Procedure, which provides:
 - (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.

[...]

(d) the Applicant does not sufficiently substantiate his claim”.

27. As mentioned above, the Applicant alleges that Judgment (Rev. no. 269/2014) of the Supreme Court, and the decisions of the regular courts violated the rights guaranteed by Article 21, Article 22, Article 23, Article 24 and Article 31 of the Constitution, as Article 6 of the ECHR.
28. Moreover, the Applicant requests the Court that the Judgment (C1. No. 273/05) of the Municipal Court, by which was approved the Applicant's claim as grounded, be implemented.
29. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral. He just mentioned the abovementioned Articles of the Constitution and the ECHR, without providing further clarification on how these violations were committed.
30. The Court also notes that the Supreme Court rejected the Applicant's request for revision as ungrounded, and supported in entirety the reasoning of the Court of Appeal.
31. Furthermore, the Court notes that the Supreme Court considered each Applicant's allegation, explaining in a detailed manner, why the Applicant's request for revision had to be rejected as ungrounded, and the Judgment of the lower instance court be upheld.
32. The Court, based on the case file, considers that the Judgment of the Supreme Court did not violate the rights guaranteed by the Constitution and the ECHR as alleged by the Applicant.
33. Regarding other allegations, pertaining to the factual situation and the interpretation of the provisions of the law, the Court emphasizes that it is not its task to deal with errors of fact or law (legality) allegedly committed by courts or the public authorities, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
34. The Court further reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or of other public authorities is to interpret and apply the pertinent rules of both procedural and substantive law (See *mutatis mutandis Garcia Ruiz vs. Spain*, No. 30544/96, para. 28, ECHR, Judgment of 21 January 1999).
35. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant

has had a fair trial (see, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

36. The Court further considers that the proceedings before the regular courts, including those before the Supreme Court were fair and reasoned (See, *mutatis mutandis*, *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
37. The Court also notes that 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*, No. 53363/99, ECHR, Decision of 31 May 2005) and has not specified how the abovementioned Articles of the Constitution support his allegation, as required by Article 113.7 of the Constitution and Article 48 of the Law.
38. In sum, the Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Rules 36 (1) (d) and (2) (b) and (d) 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) and (d) of the Rules of Procedure, on 8 March 2016, 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; and
- IV. This Decision effective immediately;

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi