



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

Prishtina, 26 January 2015
Ref. no.: RK758/15

RESOLUTION ON INAMDISSIBILITY

in

Case no. KI133/14

Applicant

Xhelil Neziri

**Constitutional review of Judgment Rev. no. 253/2012 of 7 May 2013, and
Decision CPP. no. 3/2014 of 3 June 2014, of the Supreme Court of the
Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Xhelil Neziri, from village Velekinca, Municipality of Gjilan.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 253/2012 of 7 May 2013, and Decision CPP. no. 3/2014 of 3 June 2014, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).
3. According to the Applicant, the final Decision of the Supreme Court, CPP. no. 3/2014, of 3 June 2014, was served on him on 15 August 2014.

Subject matter

4. The subject matter is the constitutional review of the Judgment Rev. no. 253/2012, of 7 May 2013, and Decision CPP. no. 3/2014, of 3 June 2014 of the Supreme Court, regarding the alleged violations of the rights guaranteed by Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

5. Legal basis for this case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 29 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 September 2014, the President of the Court, by Decision no. GJR. KI133/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and on the same date by Decision no. KSH. KI133/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 5 September 2014, the Court notified the Applicant and the Supreme Court on the registration of Referral.
9. On 5 November 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

Facts according to the regular legal remedies

10. On 1 September 2007, the Applicant concluded the employment contract with the Municipal Directorate of Education in Gjilan (hereinafter: MDE in Gjilan), as a teacher of the law subjects, in the secondary economic school "Marin Barleti" in Gjilan.

11. On 20 August 2008, the MDE in Gjilan rendered the Decision 05. no. 519/08, by which decided to not extend the Applicant's employment contract. Against this Decision of MDE in Gjilan, the Applicant filed an appeal with the same authority, in order to find out the reasons for termination of his employment contract.
12. On 17 December 2008, the MDE in Gjilan, rejected the Applicant's appeal and left in force its own Decision 05. no. 519/08. Against these decisions, the Applicant filed a statement of claim with the Municipal Court in Gjilan.
13. On 10 January 2012, the Municipal Court in Gjilan (Judgment, C. no. 480/2008), rejected the Applicant's statement of claim, filed against the MDE of Gjilan. The abovementioned court concluded as it follows:

"By hearing the claimant in the capacity of the party, the court determined the fact that the claimant, pursuant to the employment contract concluded between him and the Municipal Directorate of Education in Gjilan of 03.09.2007, he established employment relationship with the Secondary Economic School "Marin Barleti" in Gjilan as a teacher of the law subjects with a monthly salary of 214 Euros per month, and that he worked in this position until 31.08.2008, namely until the expiration of the employment contract, and that he was paid until July 2008 for the work done, whereas he was not paid at all for August 2008.

Upon analyzing all the evidence collectively, the court rejected the statement of claim of the claimant as lawfully ungrounded, since the respondent respected legal provision of Regulation No. 2001/27 on Essential Labor Law entirely upon terminating the employment relationship".

14. On 16 January 2012, the Applicant filed an appeal with the District Court in Gjilan against the first instance court judgment. The appeal is based on erroneous determination of factual situation, erroneous application of the material law and violation of UNMIK Regulation No. 2001/27, on Essential Labor Law in Kosovo.
15. On 15 June 2012, the District Court in Gjilan (Judgment, AC. no. 25/2012) rejected as ungrounded the Applicant's appeal, and upheld the Judgment of the first instance court. The abovementioned Court found that the first instance court had correctly and completely determined the factual situation and correctly applied the material law.

Facts according to extraordinary legal remedies

16. On 23 July 2012, the Applicant filed a revision with the Supreme Court against the Judgment of the District Court, due to erroneous determination of factual situation, erroneous application of the material law and violation of provisions of Article 188 of the Law on Contested Procedure (LCP).

17. On 7 May 2013, the Supreme Court (Judgment, Rev. no. 253/2012), rejected the revision filed by the Applicant and upheld as fair the judgment of the second instance court.
18. In addition, the Supreme Court, held: *"According to the assessment of the Supreme Court, the lower instance courts have correctly decided when they rejected the statement of claim of the claimant, due to the reason that the claimant established employment relationship with the respondent for fixed term within the meaning of Article 10.1, item (b) of UNMIK Regulation No. 2001/27 on Essential Labor Law in Kosovo and that the contract was established for fixed term pursuant to Article 11.1, item (d) the employment relationship is terminated following the expiration of the term of the contract. The lower instance courts have correctly applied the substantive law when they rejected the statement of claim of the claimant on compensation of personal income since after the expiration of the term of employment, all rights and obligations between the employer and the employee are terminated.*
[...]
The claimant was admitted to work with the respondent as a teacher for law subjects and based on the vacancy, however N.G. has been in this position previously and she was reinstated to the position of a teacher of legal subjects which the claimant had, and this was the reason that the claimant's employment contract of fixed term was not renewed."

Facts regarding repetition of procedure

19. On 3 July 2013, the Applicant filed a request for the repetition of procedure with the Court of Appeal of the Republic of Kosovo against the Judgment of the Supreme Court, Rev. no. 253/2012, of 7 May 2013, and the Judgment of the District Court in Gjilani, AC. no. 25/2012 of 15 June 2012, by which he requested that the matter be remanded to the first instance court for retrial and reconsideration.
20. Even though the request for repetition of proceedings was addressed to the Court of Appeals in Prishtina, it appears from the case file that such request was reviewed by the Supreme Court.
21. On 3 June 2014, the Supreme Court (Judgment, CPP. no. 3/2014) rejected as ungrounded the Applicant's request for repetition of procedure, filed against the Judgment of the Supreme Court, Rev. no. 253/2012 of 7 May 2013.
22. Furthermore, the Supreme Court, justifies its decision as it follows:

"The proposal for the repetition of procedure is ungrounded.

The Supreme Court of Kosovo assesses that by legal provision of Article 232, paragraph 1, item (e) of LCP, it is provided that the procedure may be reiterated upon the proposal of the party if the party gains the possibility to use the courts verdict of the absolute decree, which was earlier issued in the procedure developed among the same parties for the same charge claim. It results by the reasoning of the proposal for reiteration of the procedure that

the claimant regarding the abovementioned provision reasoned that the judge B. S. adjudicated in the contentious matter according to the claim of the claimant Xhelil Neziri in case C. No. 480/2008 and participated as a member of the panel in the second instance in the contentious matter according to the claim of claimant N. G. in case Ac. No. 228/2008. Therefore, in this case we deal with different claimants and unique statements of claim, and such a fact mentioned in the proposal for reiteration of the procedure could eventually deal with exclusion of the judge from the procedure, Chapter III of the Law on Contested Procedure. This Court notes that other allegations mentioned in the proposal for reiteration of the procedure on procedural violation by Article 67 of the noted law also have to do with the mentioned Chapter.

According to the assessment of the Supreme Court, the claimant did not propose any circumstance by which would be fulfilled the requirements of Article 232 of LCP in order for the procedure to be reiterated, therefore, the latter is rejected as ungrounded”.

Applicant's allegations

23. The Applicant alleges that the MDE in Gjilan and regular courts violated his rights guaranteed by Article 3 of the Constitution because in the first and in the second instance courts the same judge participated in the adjudication of the matter; Article 31 of the Constitution, because the Municipal Court in Gjilan did not take into account the fact that the Applicant had more relevant facts that his employment is extended than his colleague, whose claim for reinstatement to work was approved; and by Article 49 of the Constitution, because the MDE of Gjilan and regular courts rendered unfair decisions, by leaving the Applicant jobless.

Admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution in the Law and the Rules of Procedure.

25. 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.”

26. In addition, Rule 36 (1) d) of the Rules of Procedure provides:

*(1) The Court may consider a referral if:
(Amended 28 October 2014)*

[...]

*(d) the referral is prima facie justified or not manifestly ill-founded.
(Amended 28 October 2014)*

27. In the case at hand, the Court notes that the Applicant alleges that the MDE in Gjilan and regular courts violated his rights, guaranteed by Articles 3, 31 and 49 of the Constitution, due to the fact that the authorities that rendered the decisions on his case did not base their conclusions on relevant facts, and as a consequence, the decisions of those courts were rendered by erroneous application of material and procedural law, and that in the first and in the second instance courts the same judge participated in the adjudication of the matter.
28. In this case, the Court reviewed in entirety the course of the regular procedure and of extraordinary procedure and considers that the allegations raised do not constitute sufficient constitutional ground in any stage of their development, that would result in violation of fundamental rights guaranteed by the Constitution and the European Convention of Human Rights (ECHR).
29. The Court notes that during the regular court procedure, the appeals of the Applicant are based on law (legality), regarding the non-extension of the employment contract by the MDE in Gjilan.
30. Regarding this regular procedure, the Supreme Court, ex-officio assessed the legality of the second instance court judgment and after examination in entirety of case file, it concluded that the revision filed by the Applicant is ungrounded. In this respect, the Court considers that the Judgment of the Supreme Court does not contain elements of constitutional violation of the Applicant's rights, since the decision is substantiated, reasoned and cannot be concluded by any evidence that the judgment is unclear or arbitrary.
31. The Court also notes that in the stage of filing the request for repetition of the procedure against decisions of the second and the third instance courts, the Applicant addresses and supports his appeal, always on the ground of legality and is focused mainly on the violation of the procedural law.
32. In this respect, the Court notes, that the Supreme Court, in the Decision CPP. no. 3/2014, of 3 June 2014, clearly argued that the Applicant's request for repetition of procedure is addressed mainly for the issues, dealing with the participation of the same judge in two court instances, on which issue the Supreme Court responded to the Applicant, by stating "*in this case we deal with different claimants and unique statements of claim, and such a fact mentioned in the proposal for repetition of procedure could eventually deal with exclusion of the judge from the procedure, Chapter III of the Law on Contested Procedure*", therefore the abovementioned court assessed that the Applicant did not present any new fact, new factual circumstance that would allow the approval of the request for repetition of procedure.
33. Therefore, the Supreme Court bases its reason for rejection of the request for repetition of procedure, on the procedural law, which provisions have clearly provided in which cases the parties are allowed to use this legal remedy. Even in this respect, the Applicant failed to substantiate that the Decision on the rejection of the request for repetition of procedure is not reasoned, unclear or arbitrary.

34. The Court further reiterates that it is not a fact finding court and does not adjudicate as the fourth instance court. The Court in principle does not adjudicate the fact whether the regular courts have correctly and completely determined factual situation, or as it is the present case, to determine whether the Applicant's employment was terminated on lawful or unlawful grounds, since this is a jurisdiction of the regular court. For the Constitutional Court the key questions are those, on which existence depends the assessment on possible violations of the rights guaranteed by the Constitution (constitutionality) and not the issues that are clearly legal (legality) (see, *mutatis mutandis*, i. a., *Akdivar v. Turkey*, of 16 September 1996, R.J.D, 1996-IV, para. 65).
35. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for violation of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECHR, the Judgment of 26 July 2005 or the Resolution of the Constitutional Court, Case KI128/12, of 12 July 2013, of the Applicant *Shaban Hoxha*, request for constitutional review of Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).
36. In these circumstances, the Court finds that the facts presented by the Applicant in any way do not justify his allegation for violation of the right to equality before the law, fair and impartial trial and the right to work.
37. Therefore, the Court concludes that the Applicant's Referral, in accordance with Rule 36 (1) d) of the Rules of Procedure, is manifestly ill-founded.

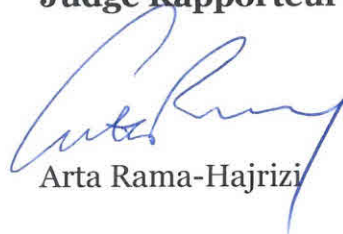
FOR THESE REASONS

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


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani