



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

Prishtina, 7 May 2015
Ref. no.: RK790/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI160/14

Applicant

Ejup Jakupi

**Constitutional Review of the Decision Rev. 215/2014,
of the Supreme Court, of 1 September 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Ejup Jakupi, with residence in Gjilan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Decision Rev. No. 215/2014, of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 1 September 2014, which was served on the Applicant on 21 October 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the Decision Rev. no. 215/2014, of the Supreme Court, of 1 September 2014. The Applicant claims that by rejecting his request for revision as inadmissible, the Supreme Court has violated his rights protected by the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant does not specify any provisions of the Constitution.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 27 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 November 2014, the President, by Decision GJR. KI160/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision KSH. KI160/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 18 November 2014, the Court notified the Applicant of the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 25 November 2014, the Applicant submitted, on its own initiative, the additional documents to the Court.
9. On 15 April 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

10. The Applicant worked as a property recorder at the Department of Finance, Economy and Development in the Municipality of Gjilan, from 20 August 2002 until 1 June 2011, when he was retired.

11. On an unspecified date, the Applicant filed a lawsuit with the Basic Court in Gjilan, requesting that the Department of Finance, Economy and Development in the Municipality of Gjilan pay him a certain amount, in the name of a jubilee salary, on the occasion of his retirement.
12. On 9 September 2013, the Basic Court in Gjilan, by Judgment C. no. 794/2012, partially approved the Applicant's lawsuit regarding the request for a jubilee award in a certain amount of money, with an annual interest rate of 3.5%, while it rejected the Applicant's request that the responding party pays another amount of money, in the name of the allowance.
13. On 30 September 2013, the Municipality of Gjilan submitted an appeal to the Court of Appeal of Kosovo (hereinafter: the Court of Appeal) against the Judgment C. No. 794/2012 of the Basic Court in Gjilan due to "1. *Substantial violations of the contested procedure provisions; 2. Erroneous and incomplete determination of factual situation; and 3. Erroneous application of the material law*".
14. On 8 April 2013, the Court of Appeal rendered Judgment AC. no. 3310/13, by which it approved the appeal of the Municipality of Gjilan.. The Court of Appeal ruled that the collective contract, in which the Applicant based his request for the jubilee salary, was concluded in 2005 and was valid for 3 (three) years, respectively it expired in 2008. Therefore, the Judgment of the Basic Court was quashed.
15. On 20 May 2013, the Applicant submitted a request for revision to the Supreme Court of Kosovo against Judgment AC. no. 3310/13 of the Court of Appeal. According to the Applicant, the Court of Appeal had committed "*substantial violation of contested procedure provisions under Article 182 para. 2, letter n etc. of LCP and erroneous application of the substantive law*".
16. On 1 September 2014, the Supreme Court (Rev. 215/2014) rejected as inadmissible the Applicant's request for revision, because the value of the claim was below the legal limit for considering claims for Revision.
17. In the part of the reasoning of its Decision, the Supreme Court stated:

"From the case file it results that the value of this contest in the claimant's claim submitted on 06.10.2011 was set at the amount of 1.664,25 €, and that later this value of the contest was not changed by the claiming party.

Setting from this factual situation, the Supreme Court of Kosovo, after having considered the admissibility of filing of this revision, found that the same is inadmissible. Pursuant to Article 211.2 of the LCP, the revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items (returning items) or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €".

Applicant's Allegations

18. The Applicant alleges that by Decision Rev. 215/2014, of 1 September 2014, rejecting his revision as inadmissible, the Supreme Court violated his rights protected by the Constitution, but without specifying any constitutional provisions.
19. In his letter submitted on 25 November 2014, the Applicant alleges that the regular courts *"have not worked in a lawful manner, but worked in an unjust manner, acting with nepotism, social, friendly connections, etc"*.

Assessment of the Admissibility of the Referral

20. The Court first examines whether the Applicant is an authorized party to submit the Referral to the Court, in accordance with requirements of Article 113.7 of the Constitution.

Article 113, paragraph 7 of the Constitution 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".

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 (...)".

22. In addition, the Court refers to Rule 36 (1) (d), 36 (2) (b) and (d) 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;

[...], or

d)) the Applicant does not sufficiently substantiate his claim".

23. The Applicant alleges that the Decision Rev. 215/2014, of the Supreme Court, of 1 September 2014, violated his rights guaranteed by the Constitution, without specifying any specific provision of the Constitution, but alluding to a violation of the right to a fair trial.
24. In this regard, the Applicant did not at all explain how and why the Decision of the Supreme Court violated his rights guaranteed by the Constitution.

25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (See, case *Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case K170/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
26. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See *inter alia*, case *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights, of 10 July 1991).
27. Based on the case file, the Court notes that the reasoning given in the Decision of the Supreme Court is clear and having examined all the proceedings, the Court found that the proceedings before regular courts were not unfair or arbitrary (See, case *Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).
28. Therefore, the Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution, the European Convention of Human Rights or the Universal Declaration of Human Rights (See, case No. KI19/14 and KI21 14, Applicants *Tafil Qorri and Mehdi Syla*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013 of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013 of the Court of Appeal of Kosovo, of 5 December 2013).
29. For the above reasons, the Court considers that the facts presented by the Applicant do not in any way justify his allegation of a violation of his constitutional rights, and the Applicant has not sufficiently substantiated how and why the Decision of the Supreme Court violated his rights guaranteed by the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rules 36 (1) c), 36 (2) b) and 36 (2) d) of the Rules of Procedure, on 7 May 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani