



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 10 August 2015
Ref. No.: RK 822/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI172/14

Applicant

Afrim Gela

**Constitutional Review of the Judgment, Rev. No. 189/2014 of the
Supreme Court of Kosovo dated 8 July 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

Applicant

1. The Applicant is Mr. Afrim Gela, with residence in village Druar, Municipality of Vushtrri.

Challenged Decision

2. The Applicant challenges the Judgment, Rev. No. 189/2014 of the Supreme Court of Kosovo of 8 July 2014, which rejected the Applicant's revision as ungrounded and upheld the Judgment of the Appellate Court, AC. No. 4112/2012 of 2 December 2013.
3. The challenged Judgment of the Supreme Court was served on the Applicant on 27 October 2014.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violated the Applicant's right to work. The Applicant's claim before the regular courts concerns his requests for reinstatement to his previous working place or compensation with a monthly payment by way of invalidity pension.

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 27 November 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 8 December 2014 the President of the Court by Decision, GJR. KI172/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI172/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
8. On 18 December 2014 the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Court requested the Basic Court in Prishtina to provide a copy of the receipt of service, which shows when the Judgment of the Supreme Court (Rev. No. 189/2014 dated 8 July 2014) was served on the Applicant.
9. On 24 December 2014 the Basic Court in Prishtina submitted the copy of the receipt of service, which shows that the Judgment of the Supreme Court (Rev. No. 189/2014 dated 8 July 2014) was served on the Applicant on 27 October 2014.
10. On 26 June 2015, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

11. On 2 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

12. The Applicant had an employment contract with KEK (hereinafter: the Employer) for an indefinite period of time.
13. On 21 April 2004, the Applicant suffered bodily injuries from an accident in his working place.
14. Consequently, on an unspecified date, the Applicant filed a request with the Employer's Pension Fund to grant him the right to a monthly payment by way of invalidity pension.
15. On 27 April 2005, the Employer approved the Applicant's request and decided (Decision No. 67/11) to send the Applicant on early retirement with the agreement of a monthly payment by way of invalidity pension, starting from 1 June 2005 and to terminate on 1 June 2010 (hereinafter: the Employer's Decision). This monthly payment was executed from the Pension Fund of the Employer in accordance with the Statute on Supplementary Pension Fund of the Employer.
16. On 7 July 2010, upon termination of the five (5) years period stipulated in aforementioned Employer's Decision, the Applicant filed a lawsuit with the Municipal Court in Prishtina. The Applicant requested his reinstatement to the previous working place, or compensation with a monthly payment by way of invalidity pension for the same amount as foreseen in the Employer's Decision (No. 67/11, dated 27 April 2005), starting from 1 June 2010 until the date he reaches the legal retirement age.
17. On 24 April 2012, the Municipal Court in Prishtina (Judgment, C. No. 1513/10) rejected the Applicant's claim as ungrounded.
18. In its Judgment, the Municipal Court in Prishtina held that the employment relationship in terms of a contractual relationship, entitles the parties to freely define the rights and obligations deriving from that relationship. Thus, it concluded that the employment relationship and the Applicant's right to the monthly payment had terminated upon expiry of the period stipulated in Employer's Decision (No. 67/11, dated 27 April 2005) and the fulfilment of the financial obligations of the Employer toward the Applicant.
19. Against the Judgment of the Municipal Court in Prishtina, the Applicant filed an appeal with the Appellate Court. In his appeal, the Applicant alleged violation of the contested procedure, incomplete ascertainment of the factual situation and erroneous application of the substantive law.
20. On 2 December 2013, the Appellate Court (Judgment, AC. No. 4112/2012) rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina.

21. In its Judgment, the Appellate Court held that the Applicant himself filed a request with the Employer's Pension Fund to grant him the right for a monthly payment by way of invalidity pension for a period of five (years). Thus, according to the Appellate Court, the employment relationship was transformed into a contractual relationship, whereby the Employer was obliged to fulfil the obligation of the monthly payment for a period of five (5) years. Therefore, according to the Appellate Court, the Applicant was no longer entitled to be reinstated in his previous working place because the employment relationship has terminated upon fulfilment of the Employer's obligation toward the Applicant.
22. The Applicant filed a request for revision with the Supreme Court against the Judgment of the Appellate Court. In his request for revision, he alleged essential violations of the contested procedure.
23. On 8 July 2014, the Supreme Court (Judgment, Rev. No. 189/2014) rejected the Applicant's revision as ungrounded.
24. In its Judgment, the Supreme Court confirmed that the Employer fulfilled its obligation toward the Applicant, because it acted in conformity with its Decision, No. 67/11, dated 27 April 2005, which decision the Applicant did not challenge. Furthermore, the Supreme Court referring to the Law on Essential Labour of Kosovo held that the employment contract may be terminated upon a written agreement between the employee and the employer.
25. For the purposes of a full presentation of the regular court proceedings, the Court notes that, in 2005, the Applicant had also initiated a civil proceeding concerning compensation for material and non-material damage for the injuries suffered from the accident. This civil proceeding, which is still pending before the regular courts, does not fall within the scope of the subject matter of the Referral, because the Applicant specifically challenges the completed proceedings concerning his claim for reinstatement to his working place, or compensation with a monthly payment by way of invalidity pension.

Applicant's allegations

26. The Applicant alleges that Judgement of the Supreme Court has violated his right to work.
27. The Applicant requests the Court for the reinstatement to his working place or compensation by way of invalidity due to his work disability.

Admissibility of the Referral

28. In order to be able to adjudicate the Applicant's Referral, it is necessary for the Court to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. The Court takes into account 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”.

30. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

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

31. In his Referral, the Applicant alleges that the challenged Judgment of the Supreme Court (Rev. No. 189/2014, of 8 July 2014) violated his right to work.
32. However, he does not explain how and why the Judgment of the Supreme Court has allegedly violated his right to work, nor he has alleged any unfairness and arbitrariness in the proceedings.
33. The Supreme Court in its Judgment held that the Employer had fulfilled its obligation toward the Applicant in accordance with its Decision (No. 67/11, dated 27 April 2005), which decision the Applicant did not challenge.
34. The Court considers that the mere fact that the Applicant is not satisfied with the outcome of the judgments of the regular courts, in particular with the Judgment of the Supreme Court is not sufficient for the Applicant to build an allegation on a constitutional violation (See *mutatis mutandis* case *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat v. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument.
35. In addition, the Supreme Court referring to the Law on Essential Labour of Kosovo held that the employment contract may be terminated upon a written agreement between the employee and the employer and it concluded that the lower court instances had correctly applied the substantive law.
36. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance when considering the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *García Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

37. Furthermore, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the completed proceedings before the regular courts have not been unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
38. In fact, the Court observes that the Applicant alleges violation of his right to work, which is guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court considers that the challenged Judgment of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's claim that justifies a conclusion that his constitutional right to work has been violated (See case KI51/14, Applicant: *Radomir Radosavljević*, Resolution on Inadmissibility of 23 January 2015, par. 32).
39. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.
40. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2), d), on 10 August 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Snezhana Botusharova

President of the Constitutional Court

Arta Rama-Hajrizi