



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

Prishtina, 10 August 2015
Ref. no.: RK 819/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI180/14

Applicant

Fehmi Pajaziti

**Constitutional Review of the Decision CPP. no. 5/2014 of the Supreme Court of
Kosovo, of 9 September 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
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Fehmi Pajaziti, from village Hajvali, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision (CPP. No. 5/2014, of 9 September 2014) of the Supreme Court of Kosovo, by which his request for repetition of proceedings regarding his claim for compensation of a certain amount of financial means, was rejected.
3. The challenged decision was served on the Applicant on 31 October 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which has allegedly violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely *“Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] in conjunction with Article 1 of Protocol 1 of the European Convention of Human Rights (hereinafter: ECHR).”*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the 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

6. On 15 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 13 January 2015, the President of the Court by Decision GJR. KI180/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI180/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 20 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

10. From the case file it follows that the Applicant was employed at Kosovo Energy Corporation (hereinafter: KEK), without his job position being specified.

11. On an unspecified date, the Applicant filed a request for early retirement-disability pension with KEK.
12. On 1 November 2008, KEK (Decision no. 171/133) approved the Applicant's request for early retirement-disability pension and accepted to pay to the Applicant a certain amount of financial means per month, on behalf of the pension, starting from 1 November 2003 until 1 December 2008.
13. After 1 December 2008, KEK stopped the payment of that certain amount of financial means.
14. As a result of this action of KEK, the Applicant filed a claim against the latter with the Municipal Court in Prishtina. He requested a compensation of monthly payments for continuing disability pension from 1 December 2008 until 30 October 2009, respectively, until the date when the Applicant enters into the category of the old-age pension.
15. On 2 November 2009, the Municipal Court in Prishtina (Judgment C1. No. 423/2008) approved the Applicant's statement of claim as grounded and obliged KEK to pay to the Applicant the requested amount of financial means with relevant legal interest. According to the Municipal Court, KEK had unlawfully interrupted the monthly payments.
16. KEK filed an appeal against the Judgment of the Municipal Court with the District Court in Prishtina.
17. On 22 April 2011, the District Court in Prishtina (Judgment Ac. no. 618/2010), rejected as ungrounded the appeal of KEK and upheld the Judgment of the Municipal Court.
18. Against this Judgment, KEK filed a request for revision with the Supreme Court *“due to substantial violation of the contested procedure provisions and erroneous application of the substantive law”*, with a proposal that the two decisions of the lower instance courts be modified and the Applicant's statement of claim be rejected as ungrounded.
19. On 26 September 2012, the Supreme Court (Judgment Rev. no. 262/12) approved as grounded the request for revision filed by KEK, modified the Judgment of the District Court and of the Municipal Court and rejected the Applicant's statement of claim as ungrounded. In its reasoning, the Supreme Court stated:

“[...] the legal stance of the lower instance courts cannot be upheld as correct and lawful, because, according to assessment of this Court, in respect to the determined factual situation, the substantive law has been erroneously applied.

Based on the Decision no. 171/133 of 23.10.2003, the claimant [Applicant] filed an application for benefiting the pension – the category I of disability, and according to this decision, the payment of the pension was effective from 01.11.2003 and shall end on 01.12.2008

The Supreme Court assesses that after 60 month payment of these wages, the respondent [KEK] has no further liability, given that it fulfilled its legal liability deriving from the abovementioned decision [...].”

20. On 20 February 2013, the Applicant filed a request for repetition of proceedings with the Supreme Court.
21. On 9 September 2014, the Supreme Court (Decision CPP. No. 5/2014) rejected as ungrounded the Applicant’s request for repetition of proceedings by reasoning that:

“[...] The claimant filed his request (proposal) for repetition of the proceeding due to erroneous and incorrect determined factual situation, erroneous application of the substantive law and due to breach of the right by termination of pay of the disability pension which have not been provided in any legal provision on extraordinary remedy of repetition of the proceedings.

Article 232 of LCP [Law on Contested Procedure] provides that the proceeding finalized by a final judgment or ruling of the court may be repeated upon the motion filed by the party in cases foreseen under items (a), (b), (c), (d), (e), (f) and (g) of aforementioned Article. According to the request of the Applicant on repetition of the proceeding, none of legal conditions to repeat the proceeding provided under aforementioned Article have been fulfilled”.

Applicant’s allegations

22. The Applicant alleges that the Supreme Court has violated his right to fair and impartial trial and the right to protection of property, as guaranteed by the Constitution, the ECHR respectively.
23. The Applicant does not provide any additional explanation regarding these allegations. He only provides a description of the facts in his referral, and then addresses the Court with the following request:

“[...] to approve the Referral and to annul Decision CPP no. 5/201, of the Supreme Court and Judgment Rev. no. 262/12”.

Assessment of the admissibility of the Referral

24. The Court shall first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
25. In this respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of Law

“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.”

Rule 36 of the Rules of Procedure

“[...] (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: [...] (d) the Applicant does not sufficiently substantiate his claim”.

26. The Court recalls that the Applicant challenges Decision (CPP. No. 5/2014, of 9 September 2014) of the Supreme Court, by claiming that it has violated the right to fair and impartial trial and the right to protection of property, guaranteed by the Constitution and the ECHR.
27. In fact, the Applicant merely states in a general manner that these rights have been violated and requests the annulment of the challenged Decision and the Judgment (Rev. no. 262/2012, of 26 September 2012) the Supreme Court.
28. The Court notes that in his Referral, the Applicant has not provided any procedural or substantive justification; he only states the abovementioned allegations without explaining further how those violations occurred.
29. In this respect, the Court notes that initially, the Municipal Court and the District Court approved the Applicant's statement of claim and ordered KEK to make the payment for months that were disputed, namely from 1 December 2008 to 30 October 2009 .
30. However, the Court also notes that the Supreme Court (Rev. No. 262/2012, of 26 September 2012) approved the request for revision submitted by KEK, filed in capacity of the respondent, and rejected the Applicant's statement of claim. In that case, the Supreme Court found that the lower instance courts have erroneously applied the substantive law and that KEK has fulfilled every obligation towards the Applicant on the date when it stopped the payments on behalf of the disability pension. The Supreme Court justified its findings based on the Decision (No. 171/133, of 23 October 2003) of KEK whereby *“the payment of pension started on 11.01.2003 and ended on 01.12.2008.”*
31. Moreover, the Court notes that the Supreme Court rejected as ungrounded the Applicant's request for repetition of the proceedings in his case, with the reasoning that *“[...] none of the legal requirements set forth in Article 232 of LCP have been fulfilled [...]”*
32. The Court considers that the proceedings before the Supreme Court were fair and that both decisions are reasoned and substantiated.

33. Therefore, the Constitutional Court considers that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia*, Report of European Commission of Human Rights in case *Edwards v. United Kingdom*, No. 13071/87, of 10 July 1991; and, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision No. 17064/06, of 30 June 2009).
34. Moreover, the Applicant has not clearly indicated how and why the challenged decision, by which his request for repetition of proceedings was rejected constitutes a violation of his individual rights and freedoms guaranteed by the Constitution and ECHR and he has not submitted evidence to substantiate the claim for such a violation.
35. 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 public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
36. The Constitutional Court 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. It is the role of the regular courts or of other public authorities, where it is possible, 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, European Court of Human Rights [ECHR], Judgment of 21 January 1999; see also Resolution on Inadmissibility in case KI70/11, of 16 December 2011, *Applicants: Faik Hima, Magbule Hima and Bestar Hima*)
37. The Court considers that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights guaranteed by the Constitution and the ECHR (See: *Vanek vs. Slovak Republic*, ECHR Decision, No. 53363/99 of 31 May 2005) and he has not specified how the Articles of the Constitution and of ECHR, invoked by him, support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
38. In sum, the Court considers that the Applicant's allegations of violation of his right to a fair and impartial trial and protection of property are unsubstantiated and not proven, and thus, are manifestly ill-founded.
39. Based on the reasons above, the Court considers that in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Referral is 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 REJECT 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

