



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

Prishtina, 23 March 2015
Ref. no.: RK 781/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI186/14

Applicant

Sahit Kurti

**Constitutional Review of Decision Rev. No. 153/2014, of the
Supreme Court, of 17 June 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Sahit Kurti (hereinafter: the Applicant) from Mitrovica, who is represented by the Law Firm „Sejdiu & Qerkini“ L.L.C. from Prishtina.

Challenged Decision

2. The Applicant challenges Decision Rev. No. 153/2014 of the Supreme Court of 17 June 2014. It rejects as ungrounded the Applicant's revision against Decision of the Court of Appeal CA. No. 3986/2012, of 16 September 2013. The challenged decision was served to the Applicant on 15 October 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the abovementioned Decision of the Supreme Court. The Applicant considers that the regular courts have erroneously calculated the deadlines for filing the lawsuit, and thus Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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 the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 31 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2015, by Decision GJR. KI186/14 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date by Decision KSH. KI186/14 the President appointed the Review Panel, composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 23 January 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 6 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

9. The Applicant was employed as a police officer in the Kosovo Police Service (KPS) from 24 December 2000 until 4 August 2005, when his employment relationship was terminated by Decision Ref. 459 - KPS - 2004, dated 4 August 2005.
10. Against the Decision the Applicant filed a complaint to the Complaint Commission of the KPS, which was rejected as ungrounded.

11. On 6 October 2005, the Applicant was notified of the decision of the Complaints Commission by a letter of KPS, which was served on him on 14 October 2005.
12. On 25 November 2005, the Applicant filed a lawsuit to the Municipal Court in Prishtina against the decision of the Complaints Commission of KPS.
13. On 14 March 2012, the Municipal Court in Prishtina by Decision C1. No. 264/07, dated 14 March 2012, which was based on Article 83 of the Law on Basic Rights from the Employment Relationship, rejected the Applicant's lawsuit as inadmissible as it was submitted after the deadline of 30 days.
14. On 20 July 2012 the Applicant filed an appeal with the Court of Appeal in Prishtina against the Decision of the Municipal Court in Prishtina.
15. On 16 September 2013, the Court of Appeal in Prishtina by Decision CA. No. 3986/2012 rejected the appeal as ungrounded and upheld Decision C1. No. 264/07, of the Municipal Court in Prishtina, dated 14 March 2012. The reasoning was that *„the first instance court has correctly ascertained that the claimant has filed the claim after the legally set forth deadline, thus has lost his right to seek for judicial protection regarding employment relationship”*.
16. On 11 November 2013, the Applicant filed for revision with the Supreme Court against Decision Ca. no. 3986/2012, of the Court of Appeal in Prishtina of 16 September 2013.
17. On 17 June 2014 the Supreme Court of Kosovo with Decision Rev. No. 153/2014 rejected as ungrounded the Applicant's request for revision, with the following reasoning:

“... According to the Supreme Court's assessment, the lower instance courts have correctly applied provision of Article 83 of the Law on Basic Rights from the Employment Relationship because this deadline is preclusive and after it expires, the employee loses his right to judicial protection; therefore, the claim filed after this deadline must be rejected as out of time. Therefore, the Supreme Court of Kosovo assessed that the allegations from the revision are ungrounded. In the revision was not stated any circumstance which would have put in doubt the legality of the challenged Decision”.

Applicant's Allegations

18. The Applicant considers, that due to erroneous calculation of the deadlines by the Supreme Court of the Republic of Kosovo, were violated his rights guaranteed by Articles 31 (Right to Fair and Impartial Trial), 32 (Right to Legal Remedies) and 54 (Judicial Protection of Rights) of the Constitution and Articles 6 and 13 of the ECHR.
19. The Applicant requests from the Court the following:

“I. To declare the Applicant's Referral admissible;

- II. *To hold that the Applicant's constitutional right to fair and impartial trial guaranteed by Article 31 of the Constitution of the Republic of Kosovo and by Article 6 of the European Convention on Human Rights and Freedoms intertwined also with the right to judicial protection of rights and the right to effective legal remedies, guaranteed by Article 54 of the Constitution of Kosovo and Article 13 of the European Convention on Human Rights, have been violated by the Supreme Court of the Republic of Kosovo by Decision Rev. No. 153/2014; to declare as invalid Decision Rev. No. 153/2014 of the Supreme Court, dated 17 June 2014;*
- III. *To declare invalid Decision Rev. No. 153/2014 of the Supreme Court, of 17.06.2014;*
- IV. *To determine and impose any other legal measure which the Constitutional Court deems to be grounded on the Constitution and on the Law and which is reasonable to the case, subject to this referral“.*

Admissibility of the Referral

- 20. The Court will examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
- 21. The Court refers to Article 113.7 of the Constitution, which 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”.
- 22. The Court also notes Article 48 of the Law, which states that:

“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“.
- 23. In addition, the Court reminds Rule 36 (2) (b) of the Rules of Procedure, which reads that:

“(2) The Court shall reject 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“.
- 24. Reviewing the Applicant's allegations regarding erroneous application of the procedural and substantive law by the regular courts, the 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 the regular courts. The role of the regular courts is to interpret and apply the pertinent legal rules. (See case *Garcia Ruiz vs. 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*,

Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

25. The Decision of the Supreme Court of Kosovo Rev. No. 153/2014 of 17 June 2014 provides a reasoned response to all Applicant's allegations related to the manner of calculation of the deadlines and the reasons for application of respective rules of the procedural and substantive law.
26. The Court notes that the Applicant is not satisfied mainly with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are issues of legality.
27. The Applicant has not provided any *prima facie* evidence for a violation of his constitutional rights (see, *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application No. 53363/99 of 31 May 2005)
28. Although the Applicant claims that his rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, he has not indicated how these decisions have violated his constitutional rights.
29. The Court further reiterates that the mere fact, that the Applicant is not satisfied with the outcome of the proceedings in his case, does not give rise to an arguable claim of a violation of his rights as protected by the Constitution. (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
30. The Applicant was provided with numerous opportunities to present his case and to challenge the interpretation of the law as being incorrect, before the Basic Court in Prishtina, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo.
31. The Court, after having examined the proceedings in their entirety, does not find that the pertinent proceedings are in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application No. 17064/06 of 30 June 2009).
32. The Court considers that the admissibility requirements have not been met. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.
33. It follows that the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 6 February 2015, 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


Snezhana Botusharova



President of the Constitutional Court


Prof. Dr. Enver Hasani