



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

Pristine, 30 January 2012
Ref. No.: 196/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 19/09

Applicant

Mehmet Llapashtica

vs.

Decision of the Supreme Court of Kosovo, No 120/2008, dated 1 January 2009.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge,
Almiro Rodrigues, Judge
Ivan Cukalovic, Judge
Snezhana Botusharova, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Mehmet Llapashtica, residing in Pristina.

Challenged Decision

2. Decision of the Supreme Court of Kosovo, No 120/2008, dated 1 January 2009.

Subject Matter

3. The Applicant filed a Referral with the Secretariat of the Constitutional Court (hereinafter: the "Court"), alleging that his right to work protected by the Constitution, in particular, Article 49, his right to work, had been violated by the Kosovo Energy Corporation (hereinafter referred to as "KEK").

Legal basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"); Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law"); and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 19 September 2009 the Applicant filed a Referral with the Secretariat of the Court.
6. The President of the Court appointed Judge Ivan Čukalović to be the Judge Rapporteur and appointed a Review Panel comprising of Judges Robert Carolan (presiding) and Judges Almiro Rodrigues and Gjyljeta Mushkolaj. The Review Panel considered the Report of the Reporting Judge and made a recommendation on the Referral to the full Court.
7. In response to the notification of the Referral sent to KEK the Legal Office of KEK replied to the Constitutional Court and included, *inter alia*, the Disciplinary complaint and the minutes of an oral hearing held by KEK into the matter, dated, 28 April 2004.
8. The Review Panel considered the report of the Judge Rapporteur on 16 June 2010 and made a recommendation to the Court that the Referral was inadmissible.

Summary of the facts

9. The Applicant was employed by the Kosovo Energy Corporation (KEK) as an electro-fitter in Pristina. Disciplinary action was taken by KEK against the Applicant arising from the unauthorized taking of an electrical transformer, the property of KEK. During the course of an oral review the Applicant denied having taken the transformer without permission but he admitted that, with others, he had received €800 for works carried out privately outside working hours.
10. Through a Disciplinary Commission dated 28 April 2004 KEK found the Applicant had violated his employment duties and they terminated his contract.
11. At a second instance Disciplinary Commission he appealed this Decision where he alleged that he did not transfer the transformer at the request of others but that he had the permission of the head of the KEK district. This second instance Disciplinary Commission rejected his appeal by decision dated 2 June 2006.
12. The Applicant appealed his dismissal to the Municipal Court of Pristina who upheld his suit and the Court in its Judgment Cl. Br. 167/2006, dated 28 September 2006 ordered that the Applicant be returned to work. This Decision was appealed by KEK to the

District Court of Pristina which through its Judgment AC. nr. 1016/2006, dated 31 July 2007 rejected the Appeal of KEK and upheld the Decision of the Municipal Court.

13. KEK appealed this Decision to the Supreme Court of Kosovo which through its Judgment, Rev. nr. 120/2008, dated 1 January 2009, upheld the Appeal of KEK and quashed the Judgment of the District Court thereby upholding the dismissal of the Applicant from employment with KEK. The Supreme Court found that the Municipal Court wrongly applied the material law when it found Applicant's suit well founded.
14. The Supreme Court stated that the Essential Labour Law of Kosovo, UNMIK Regulation No. 2001/27, which entered into force on 8 December 2001, provided for the termination of a labour contract. The Court noted that the Law provided for termination of the labour contract in cases of serious misconduct including theft, destruction of property, damage or unauthorised use of employer assets. For these reasons the Supreme Court found the Appeal of KEK well founded and reversed both Judgments of the Municipal and District Courts and rejected the Applicant's claim.

Applicant's allegations

15. The Applicant alleges, without further elaboration, that his right to work has been violated.

Assessment of the admissibility of the Referral

16. Article 49 of the Constitution provides that:

The right to work is guaranteed.

17. Article 54 of the Constitution provides that:

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

18. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1]).
19. 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, *Constitutional Court Judgment of 23 June 2010, in the Case No. KI 40/09, Imer Ibrahimimi and 48 other former employees of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras 66 and 67*).
20. The Applicant merely disputes whether the Supreme Court correctly applied the applicable law and merely disagrees with the factual findings of the Supreme Court decision with respect to the employee status of the successful recruits for the disputed position it appears that the Applicant's claim is inadmissible
21. Having examined proceedings before the ordinary courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009)_

22. Furthermore the Applicant had not submitted any prima facie evidence indicating a violation of his rights under the Constitution (*see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005*).
23. It follows that the Referral is manifestly ill-founded and must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo and Rule 56.2 of the Rules of Procedure, unanimously

DECIDES

- I. TO REJECT the referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. The Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

