



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

Prishtina, 27 November 2014
Ref. no.: RK735/14

RESOLUTION ON INADMISSIBILITY

in

Cases no. KI19/14 and KI21/14

Applicants

Tafil Qorri and Mehdi Syla

Constitutional review of the 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

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referrals were submitted by Mr. Fadil Qorri from Glllogovc and Mr. Mehdi Syla from village Kishnarekë, Municipality of Glllogovc (hereinafter: the Applicants). Mr. Mehdi Syla is represented by Mr. Bashkim Latifi, a practicing lawyer from Prishtina; whereas Mr. Fadil Qorri does not have a representative.

Challenged decisions

2. The Applicant Fadil Qorri (KI19/14) challenges the Decision CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, which was served on him on 17 January 2014.
3. The Applicant Mehdi Sylja (KI21/14) challenges the Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013, which was served on him on 17 January 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged Decisions which rejected as ungrounded the Applicants' appeals for a certain amount of compensation related to the occasion of their retirement.

Legal basis

5. 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

6. On 5 February 2014 the Applicants submitted their Referrals with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 March 2014 the President of the Court by Decision, GJR. KI19/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, KSH. KI19/14 the Review Panel composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 11 March 2014 in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered the joinder of Referrals KI19/14 and KI21/14. By this order, it was decided that the Judge Rapporteur and the Review Panel for both cases be the same as it was decided by the Decisions GJR. KI19/14 and KSH. KI19/14 of the President.
9. On 13 March 2014 the Court notified the Applicants of the registration of the Referral and requested that they file a power of attorney for Mr. Bashkim Latifi since the Applicants had announced that he will be representing them before the Court.
10. On 16 April 2014, Mr. Mehdi Sylja (KI21/14) filed the requested document with the Court whereas, Mr. Tafil Qorri has not filed the requested document.

11. On 13 June 2014, the Court notified the Applicants of the Joinder of these two Referrals and the Court of Appeal of the registration of the Referrals KI19/14 and KI21/14 and the joinder of these two Referrals.
12. On 16 September 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On an unspecified date the Applicants filed a claim with the Basic Court in Prishtina requesting the Department of Education of Municipality of Glogoc to pay to the Applicants a certain amount related to the occasion of their retirement.
14. On 4 June 2013, the Basic Court in Prishtina (Decision C. no. 132/2013) rejected the claim of Mr. Fadil Qorri (KI19/14) as inadmissible. On the same date, the Basic Court in Prishtina (Decision C. no. 130/013) rejected the claim of Mr. Mehdi Sylja (KI21/14) as inadmissible.
15. The Basic Court, when rejecting the Applicants' claims as inadmissible, reasoned identically in both cases and held that: *"[...] In the concrete case the claimant did not comply with the provisions of Article 78 and 79 of the Law on Labor of Kosovo. Based on this fact [...] the Court by applying the provision 391 of the Law on Contested Procedure rejected the claim as inadmissible since the claim was submitted before the Applicant had exhausted the legal remedies that were available before the respondent."*
16. The Applicants filed their appeals with the Court of Appeal of Kosovo, due to *"substantial violation of contested procedure provisions"* and requested that the challenged Decisions are quashed and the cases are remanded for retrial at the Basic Court.
17. On 5 December 2013 the Court of Appeal (Decision CA. no. 2129/2013) rejected as ungrounded the appeal of Mr. Fadil Qorri (KI19/14). On the same date, the Court of Appeal (Decision CA. no. 1947/2013) rejected as ungrounded the appeal of Mr. Mehdi Sylja (KI20/14). In both cases the Court of Appeal reasoned that:

"[...] the first instance court decided correctly to reject the claimant's claim as inadmissible. [...] from the case file it is found that the claimant did not address to the respondent in order to protect his rights upon retirement pursuant to Article 78 of the Law on Labor in Kosovo. [...] the right to retirement and possible benefits derive from the employment relationship thus the claimant pursuant to Article 78 of the Law on Labor should have respected the internal procedure for realizing his rights."

Applicant's allegations

18. The Applicants claim that the challenged Decisions constitute a violation of Article 3 [Equality before the Law], Article 22 [Direct Applicability of

International Treaties and Instruments], Article 24 [Equality before the Law] and Article 54 [Judicial Protection of Rights] of the Constitution. The Applicants claim a violation of the European Convention on Human Rights (hereinafter: ECHR) and the Universal Declaration of Human Rights (hereinafter: UDHR) without specifying any article of these documents.

19. The Applicants in their separate but identical Referrals allege that: *“Both the first instance court and the Court of Appeal have mistaken the legal ground of the claim by considering it to be in the category of the procedures for realizing the rights from the employment relationship pursuant to Article 78 of the Law on Labor. Whereas, this particular case is about compensation pursuant to the collective agreement and therefore it falls under the category of obligations relationships.”*
20. Furthermore, the Applicants allege that: *“Pursuant to Article 102 of the Constitution [...] the Courts should have adjudicated without any influences, by respecting the hierarchy of legal acts that represent a source of employees’ rights as specified in the provision of Article 4 of the Law on Labor [...].”*
21. The Applicants request the Court: *“to review the violations of public authorities pursuant to the Decision of the Basic Court in Prishtina [...] and the Decision of the Court of Appeal [...] and to annul the same as unconstitutional and illegal.”*

Admissibility of the Referral

22. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
23. In that 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 [...].”
24. In addition, the Court also refers to Rules 36 (1) c), 36 (2) b) and d) of the Rules of Procedure, which provide:

*“(1) The Court may review referrals only if:
[...]
(c) The referral is not manifestly ill- founded.*

*(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,
[...], or
(d) the Applicant does not sufficiently substantiate his claim.”*
25. In this respect, the Court notes that the Applicants challenged the Decisions of the Basic Court before the Court of Appeal due to substantial violation of

contested procedure provisions. Now, they challenge the Decisions of the Court of Appeal before the Constitutional Court because the challenged Decisions allegedly violated their “*guaranteed right for equality before the law and judicial protection of rights.*”

26. The Court recalls that in accordance with the principle of subsidiarity it is up to the Applicants to raise any alleged constitutional violation before the regular courts for them primarily to ensure protection of their fundamental rights enshrined in the Constitution. It is also up to the Applicants to substantiate their claims and clarify how and why a decision has violated their rights guaranteed by the Constitution.
27. In this regard, the Court notes that the Applicants have not raised with the Court of Appeal the alleged constitutional violations of their guaranteed rights for equality before the law and judicial protection of rights. Moreover, the Applicants do not accurately clarify why and how the Decisions of the Court of Appeal have violated their rights to equality before the law and judicial protection.
28. The Court recalls that the Court of Appeal has answered all of the Applicants’ allegations when rejecting their appeal by holding that: “*The collective agreement on which the claimant grounds its right was adopted on 1.01.2005 and was applicable for three years, respectively until 31.12.2007. After this, no collective agreement has been signed in Kosovo, which is a well-known fact. The claimant acquired his right to retirement on 5.09.2012, thus he cannot seek the remuneration of retirement salaries and jubilee salaries on the grounds of an invalid collective agreement.*”
29. In this respect, the Court considers that the Decisions of the Court of Appeal provided extensive and comprehensive reasoning on the facts of the case and its legal findings are well reasoned and clear in answering the allegations presented by the Applicants. Thus, the Court finds that the proceedings before the regular courts have been fair and reasoned (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
30. In this connection, 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. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28. See also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
31. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

32. After reviewing the arguments and evidence presented by the Applicants, the Court considers that the challenged Decisions were not rendered in an unfair or arbitrary manner.
33. Therefore, the Court considers that the Applicants have not substantiated their allegations nor have they submitted any *prima facie* evidence indicating a violation of their rights under the Constitution, the ECHR or the UDHR.
34. For the foregoing reasons, the Court concludes that the facts presented by the Applicants do not in any way justify the alleged violations of the constitutional rights invoked by them and they have not sufficiently substantiated their claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, and Rules 36 (1) c), 36 (2) b), 36 (2) d), and 56 (2) of the Rules of Procedure, on 16 September 2014, 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

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani