



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

Prishtina, 14 November 2014
Ref. no.:RK727/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI20/14

Applicant

Musa Gjetaj

**Constitutional review of the
Judgment, CA. No. 2976/2013 of the Court of Appeal of Kosovo
dated 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, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Musa Gjetaj from Ferizaj (hereinafter, the Applicant), represented by Mr. Bashkim Latifi lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment, CA. No. 2976/2013 of the Court of Appeal of Kosovo dated 5 December 2013, which was served on the Applicant on 17 January 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated his rights guaranteed by the Constitution, namely, Article 3 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], paragraph 1, Article 54 [Judicial Protection of Rights], Article 55 [Limitations on Fundamental Rights and Freedoms] paragraph 4, Article 102 [General Principles of the Judicial System].

Legal basis

4. 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 the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 5 February 2014 the Applicant submitted the Referral to the Court.
6. On 6 March 2014, the President by Decision, No. GJR. KI 20/14 appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision, No. KSH. KI 20/14 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 13 March 2014 the Court notified the Applicant of the registration of the Referral and requested that he files a power of attorney for Mr. Bashkim Latifi. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 16 March 2014 the Applicant submitted the requested document to the Court.
9. On 15 September 2014 the President replaced Judge Robert Carolan as a member of the review panel with Judge Arta Rama-Hajrizi.
10. On 15 September 2014, 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

11. The Applicant is a teacher with a permanent contract at a primary school in Dobrihtë, Municipality of Gjakova.
12. In the local elections held on November 2007, the Applicant ran for a public office position. For the period that he was campaigning, the Directorate of Education in the Municipality of Gjakova withheld his teacher's salary.
13. As a result, the Applicant filed a claim with the Municipal Court in Gjakova where he requested compensation for the work he performed as a teacher whilst campaigning for the local elections. The Applicant's representative supported the claim of the Applicant before the Municipal Court by arguing that:

"[...] The claimant had an employment relation of indefinite duration as a teacher [...] and during the entire campaign he was at work. [...] The respondents unjustly withheld the claimant's salary for the work he performed during the election campaign (November and 10 first days of December 2007)."

14. On 20 June 2013, the Municipal Court by Judgment, C.No.58/08 rejected the request of the Applicant as ungrounded. The Municipal Court held that:

"[...] the Court administered the evidences and after assessing them, [...] found that the claim is not grounded and rejected it.

The Administrative Instruction MLGA-no.2007/07 of the MGLA on the limitation of the political activities for municipal civil servants of 5 September 2007, [...] Article 6 provides that when the municipal civil servants submit their candidacy for public office, he or she must take unpaid leave 15 days prior to the election campaign so that they are relieved of their responsibilities and obligations in the municipal civil service. Article 9 provides that the municipal civil servants running for public office have the right to return to their position within 1 (one) week from the day election results are formally announced, in case they are not elected for the public office they ran for.

[...]

Pursuant to the administered evidences it is found that the claimants claim is not grounded despite the fact that the claimant has worked regularly during the period for which remuneration is sought."

15. The Applicant appealed to the Court of Appeal in Prishtina, due to "essential violation of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of material law".
16. On 5 December 2013, the Court of Appeal by Decision, CA. No. 2976.2013 rejected as ungrounded the appeal of the Applicant and approved the Judgment of the Municipal Court.

17. The Court of Appeal held that:

“Article 182.2 n) mentioned in the appeal has not been violated, because the enacting clause is clear and in compliance to the evidences in the case file. In other words, from the case file it is found that the claimant as a teacher at the primary school [...] ran for public office in the elections of 17 November 2007. As a candidate for public office the claimant should have respected the Administrative Instruction no 2007/10 that was rendered by the Ministry of Public Administration (hereinafter: MPA), as well as the notification of the MPS. The mentioned acts provide that the candidates for public office participating in pre-election activities should have taken unpaid leave starting from the day their candidacy was announced.

This act is applicable in the entire territory of Kosovo and Municipalities cannot make any exemptions and render opposing decisions. The administrative instruction regulated the behavior rules of the candidates during the election campaign in all the municipalities in Kosovo. The candidate that announced his candidacy should have respected the provided rules.”

Applicant’s allegations

18. The Applicant alleges that the Court of Appeal by rejecting his appeal against the Judgment of the Municipal Court has violated his rights guaranteed by the Constitution, namely, Article 3 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], paragraph 1, Article 54 [Judicial Protection of Rights], Article 55 [Limitations on Fundamental Rights and Freedoms] paragraph 4, Article 102 [General Principles of the Judicial System]. Furthermore, the Applicant alleges a violation of his rights guaranteed by Article 23, paragraph 2 of the Universal Declaration of Human Rights. The Applicant also alleges that his rights protected by the European Convention on Human Rights and its Protocols have been violated without specifying any Article of this instrument.
19. The Applicant claims that: *“The first instance court and the Court of Appeal upon rendering their decisions – Judgments, violated the provisions of the contested procedure foreseen by Article 182.1 in conjunction with the provisions of Article 183 and Article 182.1.n, [...]”*
20. The Applicant also claims that: *“[...] the Court of Appeal did not assess any of the facts presented in the appeal, although pursuant to the provision of Article 204 of the Law on Contested Procedure the second instance court is obliged to assess in the reasoning of the Judgment the appeal claims of decisive importance in rendering its decision. Therefore the Court should have adjudicated while respecting the hierarchy of legal acts that is specified by Article 22 of the Constitution [...]”*
21. Referring to Article 23, paragraph 3 of the Universal Declaration of Human Rights, the Applicant further alleges that: *“the courts denied his right to remuneration for the conducted work”* by not applying this provision.

22. In the end, the Applicant requests from the Court to:

“[...] review the violations of public authorities pursuant to the Judgment of the Basic Court in Gjakova C. No. 56/2008 of 20.06.2013 and the Judgment of the Court of Appeal in Prishtina AC. No. 2976/2013 and to annul the same as unconstitutional and illegal.”

Assessment of the admissibility of the Referral

23. The Court has to examine whether the Applicant has met the necessary requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

24. In that respect, Article 113 (1) and (7) of the Constitution provides:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]*

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law.”

25. In addition, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision”*.

26. In the instant case, the Court notes that the Applicant has sought recourse to protect his rights before the Municipal Court and the Court of Appeals. The latter was the last instance to which the Applicant could have sought recourse considering that the amount of the civil contest was below 3,000.00 €. The Court also notes that the Applicant was served with the Judgment of the Court of Appeal on 17 January 2014 and filed his Referral with the Court on 5 February 2014.

27. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

28. However, in its further assessment of the admissibility of the Referral the Court also refers to Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provide that:

“(1) The Court may only deal with Referrals 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:
[...], or*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,
[...]"*

29. The Applicant, as said above, challenged the Judgment of the Municipal Court before the Court of Appeal for violations of the contested procedure law, erroneous and incomplete determination of the factual situation and erroneous application of material law.
30. Meanwhile, before the Constitutional Court, the Applicant alleges a violation of his rights as guaranteed by the Constitution which pertain to equality before the law, direct applicability of international agreements and instruments, right to fair and impartial trial, judicial protection of rights, limitations on fundamental rights and freedoms and general principles of the judicial system.
31. The Court notes that in the appeal procedure, the Court of Appeal regarding the request for compensation Applicant's remuneration reasoned its Judgment referring to the provisions of the law in force. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
32. In relation to this, the Court recalls the reasoning of the Court of Appeal in answering the Applicant's allegation of violations of the law and substantial violations of contested procedure provisions allegedly committed by the Municipal Court when it rejected his appeal on the compensation of remuneration. The Court of Appeal stated that:

"[...] While assessing the challenged Judgment within the limits of the allegations mentioned in the appeal, this court found that the same was rendered without any essential violation of the contested procedure and that the factual situation was correctly ascertained and that the material right had been applied correctly. Thus, the first instance court decided correctly when it rejected the claim as ungrounded."
33. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
34. The Constitutional Court further 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 rules of both procedural and substantive law. (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). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.

35. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
36. In relation to this, the Court notes that the reasoning referring to the request compensation of the requested remuneration in the Judgment of the Court of Appeal is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Municipal Court has not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
37. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant.
38. Consequently, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (1) c), 36 (2) b) and 56 (2) of the Rules of Procedure, on 15 September 2014, 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

President of the Constitutional Court


Kadri Kryeziu


Prof. Dr. Enver Hasani

