



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

Prishtina, on 31 July 2015
Ref. No.: RK 811/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI20/15

Applicant

Non-Governmental Organization FINCA Kosovo

**Request for Constitutional Review of Judgment Rev. no. 205/2014, of the
Supreme Court, of 14 October 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, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is the Non-Governmental Organization FINCA Kosovo, which is represented by Mr. Vigan Rogova, a lawyer.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 205/2014, of the Supreme Court of the Republic of Kosovo, of 14 October 2014 (hereinafter: the Supreme Court), which was served on the Applicant on 9 December 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. no. 205/2014, of 14 October 2014, regarding the Applicant's allegations of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, in conjunction with Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter: ECHR).
4. The Applicant also requests the Court to impose Interim Measure, regarding the suspension of the enforcement proceedings.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22, 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 54, 55 and 56 of the Rules of Procedure.

Proceedings before the Constitutional Court

6. On 25 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 10 April 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 12 April 2015, the President of the Court by Decision no. GJR. KI20/15, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI20/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).
9. On 1 July 2015, the President of the Court by Decision no. GJR. KI20/15, appointed Judge Ivan Čukalović as Judge Rapporteur replacing Judge Kadri Kryeziu, whose mandate as a judge ended on 26 June 2015, and by Decision KSH. KI20/15, the President of the Court replaced Judge Ivan Čukalović - as a member to the Review Panel.
10. On 6 July 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

11. On 25 September 2000, the Applicant concluded an employment contract with the employee SH.K. regarding the position of the loan analyst.

12. On 21 March 2011, the Applicant decided to terminate to the employee the employment contract, because of delays in the repayment of loans.
13. On 18 May 2011, the employee filed the claim with the Municipal Court in Prizren against the decision on termination of the employment contract, requesting the annulment of the decision as unlawful, and the reinstatement to her working place.
14. On 13 September 2012, the Municipal Court in Prizren (Judgment, C. no. 290/11) with respect to the claim of the employee, decided: I. To partly approve the claim of the employee; II. To annul as unlawful the Applicant's decision of 21 March 2011 regarding the termination of the employment contract of the employee; III. To oblige the Applicant to pay to claimant 14 (fourteen) unpaid salaries, in the monthly amount of € 1,000.00 and in a total amount of € 14,000.00; IV. To oblige the Applicant to pay to claimant the costs of the proceedings, in the amount of € 606.00; and V. To reject the statement of claim of the employee for the reinstatement to her working place.
15. Against this judgment, the employee filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), regarding item III and V of the enacting clause of the Judgment.
16. Against the Judgment of the Municipal Court of Prizren, the Applicant filed the appeal within legal deadline, due to substantial violation of the contested procedure provisions, erroneous determination of factual situation and erroneous application of the substantive law.
17. On 7 April 2014, the Court of Appeal (Judgment Ac. No. 4342/2012), rejected as ungrounded the appeals filed by the employee and the Applicant, and upheld in entirety the Judgment of the Municipal Court in Prizren.
18. The Applicant submitted a revision to the Supreme Court against the Judgment of the Court of Appeal, with the proposal that the challenged judgment be modified or quashed, and the case be remanded for retrial.
19. The employee also filed a request for revision due to substantial violation of the contested procedure provisions and erroneous application of the substantive law, requesting the modification of item III and V of the Judgment, regarding the compensation of all unpaid salaries and her reinstatement to the working place.
20. On 14 October 2014, the Supreme Court rendered Judgment Rev. no. 205/2014 and decided: to reject the revision submitted by the Applicant under item I and II of the Judgment; to approve the Applicant's revision in item III of the Judgment, with respect to compensation of unpaid salaries; to quash the judgments of the lower instance courts under item IV of the enacting clause and to remand the case to the first instance court for reconsideration and retrial for this item; to approve the revision of the employee regarding the item V of the enacting clause of the Judgment for the reinstatement to the working place.

Applicant's allegations

21. The Applicant alleges that the Supreme Court violated its constitutional rights, guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution, because "... *The Supreme Court of Kosovo by Judgment Rev. no. 205/2014 of 9 December 2014 deprived the Applicant of the constitutional rights that derive from Article 49 of the Constitution of the Republic of Kosovo -Right to Work and Exercise Profession.*"
22. The Applicant also refers to the Judgment of the Constitutional Court in Case KO131/12.
23. Furthermore, the Applicant alleges that "*the Judgment of the Supreme Court of Kosovo, by which it decided on the reinstatement of the claimant to her working place, was rendered contrary to Article 80 of the Law on Labour, which has to do with "the court decision regarding the termination of the employment contract"*".
24. Moreover, the Applicant requests the Court: "*To declare the Referral admissible; To hold that there has been violation of Article 49 of the Constitution of the Republic of Kosovo, in conjunction with Article 6 of the European Convention of Human Rights; To declare invalid Judgment Rev. No. 205/2014 of the Supreme Court of Kosovo, of 14 October 2014; To remand the Judgment of the Supreme Court for reconsideration in accordance with the Judgment of this Court; To impose the Interim Measure on suspension of all enforcement actions and procedures.*"

Admissibility of the Referral

25. Before considering the Referral filed, the Constitutional Court shall first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
26. Regarding this Referral, 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 and what concrete act of public authority is subject to challenge".
27. In addition, Rule 36 (1) (d) of the Rules of Procedure, provides:
 - (1) *The Court may consider a referral if:*
 - [...]
 - (d) *the referral is prima facie justified or not manifestly ill-founded.*
28. Furthermore, Rule 36 (2) of the Rules of Procedure provides:
 - (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.*

29. In the present case, the Court notes that the Applicant alleges that the Supreme Court, by its Judgment Rev. no. 205/2014, has violated the Applicant's rights guaranteed by Article 49 of the Constitution, in conjunction with Article 6 of the ECHR, alleging that the reinstatement of the claimant to her workplace and her compensation is contrary to the abovementioned provisions, and contrary to Article 80 of the Law on Labor (No. 03/L-212) of the Republic of Kosovo.
30. Regarding the Applicant's allegation of violation of Article 49 of the Constitution, in conjunction with Article 6 of the ECHR, the Court considers that such an allegation does not represent the constitutional basis and a compelling argument that would conditionally allow the Court to go further into the assessment of the merits of the Referral. The Applicant has not clarified how and why the Supreme Court decided, in violation of the Applicant's rights guaranteed by the aforementioned provisions of the Constitution and of the ECHR.
31. The Court reiterates that in order to have a reasoned case that refers constitutional violation, the Applicant must show and prove that the proceedings before the regular courts, namely before the Supreme Court, viewed in their entirety, have not been applied in a correct manner and in accordance with the requirements of a fair trial, or that other violations of the constitutional rights should have been committed by the Supreme Court during the trial.
32. However, as to the Applicant's allegations regarding violation of the substantive law provisions, the Court considers that such an allegation is within the scope of legality and not of constitutionality.
33. The Court recalls that it is not its task to assess the legality of decisions of the regular courts, as in the present case the interpretation of the law, if an order for compensation or reinstatement of the claimant to work was based on the law. The contractual and work relationships are regulated by law, and the interpretation of the provisions of these laws is also the jurisdiction of the regular courts, in particular of the Supreme Court, as the highest instance of regular judiciary.
34. In this regard, the Court should not 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*, *Garcia Ruiz vs. Spain*, No. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-1).
35. The Court considers that the reasoning of the Supreme Court is comprehensive and contains detailed reasoning, on why should the judgments of the lower instance court, be upheld, quashed or modified in some items of the enacting clause of judgments.

36. The Constitutional Court can only consider whether the evidence before the courts and other authorities has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial. (See, among other authorities, the Report of the European Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
37. Therefore, the Court in the present case cannot consider that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (See, *mutatis mutandis*, *Shub vs. Lithuania*, Decision of ECHR on the admissibility of application no. 17064/06, 30 June 2009).

Assessment of the Request for Interim Measure

38. The Applicant also requests the Court to impose Interim Measure, namely to suspend all enforcement actions and proceedings related to his case.
39. In this respect, the Court refers to Rule 55 (4) of the Rules of Procedure, it is necessary that:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral”
[...]

40. The Court further finds that, as the Applicant's Referral is manifestly ill-founded and is declared inadmissible, the request for Interim Measure cannot be subject to review before the Court, therefore, the request for imposition of Interim Measure should be rejected.
41. For the foregoing reasons, the Court concludes that the Applicant's Referral is manifestly ill-founded and is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 27 and 48 of the Law and Rules 36 (1, d), 36 (2, d), 55, 55 and 56 (2, 3) of the Rules of Procedure, on 31 July 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Arta Rama-Hajrizi

