



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

Prishtina, 3 December 2015
Ref. No.:RK867/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI21/15

Applicant

Halim Ibrahim

**Constitutional Review of Judgment Rev. No. 179/2014 of the Supreme
Court of the Republic of Kosovo of 8 October 2014**

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
Bekim Sejdiu, Judge.

Applicant

1. The Referral was submitted Mr. Halim Ibrahim represented by Mr. Ramiz Suka, a lawyer practicing in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment Rev. no. 179/2014 of the Supreme Court of 8 October 2014. This decision was served on the applicant on 17 November 2014.

Subject Matter

3. Subject matter is the constitutional review of the Judgment Rev. no. 179/2014 of the Supreme Court of 8 October 2014.

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 Rule of Procedure).

Proceedings before the Constitutional Court

5. On 25 February 2015 the Applicant submitted the Referral through postal service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 March 2015 the President of the Court by Decision No. GJR. KI21/15 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI21/15 appointed the Review Panel composed of judges Altay Suroy, Snezhana Botusharova and Kadri Kryeziu.
7. On 2 April 2015 the applicant was notified about the registration of the referral and a copy was sent to the Supreme Court.
8. On 27 April 2015 the applicant was asked to present power of attorney for his representative as well as evidence about the date of service of the challenged judgment. On the same date, the Basic Court in Prishtina was notified about the registration of the referral with the request to provide evidence pertinent to the date of service of the challenged judgment.
9. On 26 June 2015 the mandate of Judge Kadri Kryeziu ended. On 1 July 2015, the President of the Court by Decision No. KSH. KI21/15 appointed Judge Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu.
10. On 4 August 2015, the applicant was again asked to present the power of attorney for his representative and to sign the referral form.
11. On 14 August 2015, the applicant submitted the power of attorney and signed the referral form.

12. On 11 September 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. From the documents contained in the referral it appears that the applicant had established employment relationship with company PUC "Higjieno-Teknika" in Prishtina in 1981 in the position of refuse collector. From 1981 until 2002 the applicant rendered his services for the PUC "Higjieno-Teknika" in various job positions.
14. On 14 March 2001 the PUC "Higjieno-Teknika" by Decision No. 228 assigned the applicant to the position of keeper of the cemetery which was formally accepted by the applicant (contract no. 162 of 27 February 2002). This decision was a result of disciplinary proceedings against the applicant because he had refused to fulfill his obligations arising from his previous position in addition to his request to work in an office position as "officer of the private sector".
15. On an unspecified date the applicant filed a statement of claim with the Municipal Court in Prishtina against the PUC "Higjieno-Teknika", thereby claiming annulment of Decision 228 of 14 March 2001 and requesting reinstatement to his work and duties as an officer of the private sector.
16. On 30 January 2012 the Municipal Court in Prishtina, by Judgment C. no. 1533/09, rejected the applicant's statement of claim whereby he requested annulment of Decision No. 228 of 14 March 2001 and reinstatement to his work and duties as an "officer of the private sector". The Municipal Court in Prishtina reasoned, *inter alia*, that the applicant had accepted the position of keeper of cemetery by signing contract no. 162 of 27 February 2002, that the applicant never had a contract with his employer regarding the position of the "officer of private sector", that position of the "officer of private sector" did not even exist, and that, his statement of claim for reinstatement as an "officer of private sector" is in contradiction to the evidence he provided to the basic court.
17. On an unspecified date, the applicant filed a complaint with the Court of Appeal of Kosovo against the above stated decision of the trial court. The applicant alleged, *inter alia*, essential violations of the provisions of the contested procedure, erroneous and incomplete ascertainment of the factual situation, incorrect application of the substantive law, and requested the Court of Appeal to quash the challenged decision and to return the case for re-consideration by the trial court.
18. On 25 November 2013 the Court of Appeal of Kosovo (Judgment Ac. No. 4820/2012) rejected the applicant's complaint as unfounded and upheld the decision of the trial court (Judgment C. no. 1533/09 of 30 January 2012). The Court of Appeal of Kosovo agreed with and adopted the legal and factual assessment of the case by the trial court by adding, *inter alia*, that the trial court had correctly ascertained the factual situation and correctly applied the substantive law by finding that the applicant's statement of claim was unfounded.

19. On an unspecified date the applicant filed a request for revision with the Supreme Court. The applicant alleged, *inter alia*, essential violations of the law on contested procedure, erroneous application of the substantive law and proposed that decisions of the trial and appeal courts respectively be remanded for reconsideration.
20. On 8 October 2014 the Supreme Court of Kosovo (Judgment Rev. No. 179/2014) rejected the applicant's request for revision as unfounded. The Supreme Court of Kosovo agreed with and adopted the legal and factual assessment of the case by the trial and appeal courts respectively by adding, *inter alia*, that: (i) the applicant's allegations were unfounded because the disciplinary measure imposed by the employer against the applicant concerning the changing of his job position was of an indefinite duration and not a temporary one and (ii) the applicant never established an employment relationship with his employer for the position (officer of the private sector) where he requested to be reinstated.

Applicant's Allegations

21. The Applicant requests the Court to reinstate him to the workplace "officer of the private sector PUC "Higjieno-Teknika".
22. Furthermore the Applicant alleges that there were flagrant violations of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.

Assessment of admissibility

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

"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."

25. 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".

26. The Court further takes into account Rule 36 2 (b) of the Rules of Procedure which establish:

"(2) The Court shall declare 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 rights guaranteed by the Constitution”.

27. In the concrete case the Applicant requests the Court: “to reinstate him to the position of the officer of private sector in PUC Higjieno-Teknika”, and that, there have occurred “flagrant violations of Article 49 [Right to Work and Exercise Profession]”.
28. The Court considers that the regular courts have sufficiently explained the contractual rights and obligations between the applicant and his employer PUC “Higjieno-Teknika” arising from the employment relationship, the nature of the disciplinary measure imposed on the applicant and duration of the repercussions of such a measure, and that, the applicant did not establish before the regular courts that he had previously held the position of an “officer in the private sector” by failing to provide any evidence to back up that allegation.
29. Moreover, the regular courts have established that the position of an “officer of the private sector” did not even exist within the organizational scheme of his employer PUC “Higjieno-Teknika”. The Court, therefore, considers that the applicant, factually and legally, did not have any “legitimate expectations” to be reinstated in a position which he did not hold before, and which, did not even exist within the organizational scheme of his employer.
30. The Constitutional Court recalls that it is not a fact-finding Court. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a “fourth instance court” (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
31. Moreover, the Referral does not indicate that the regular courts of the Republic of Kosovo acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
32. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 49 [Right to Work and Exercise Profession] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).

33. Bearing in mind all of the foregoing, the Court considers that the presented facts do not in any way justify the allegation of a violation of rights guaranteed by the Constitution.
34. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 11 September 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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;

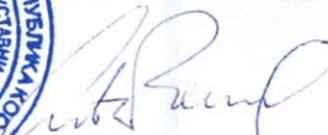
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Arta Rama-Hajrizi