



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 15 February 2016
Ref. No.:RK891/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI41/15

Applicant

Xheladin Berisha

**Constitutional review of Judgment Rev. no. 27/2015 of the Supreme
Court of 12 February 2015.**

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 Referral was submitted by Mr. Xheladin Berisha (hereinafter: the Applicant), residing in the village Shtitaricë, Municipality of Vushtrri.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 27/2015 of the Supreme Court of 12 February 2015, which was served on the Applicant on 24 March 2015.

Subject matter

3. The subject matter is the constitutional review of Judgment Rev. no. 27/2015 of the Supreme Court, by which allegedly Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) has been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 30 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 April 2015 the President of the Court, by Decision No.GJR. KI41/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH. KI41/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Arta Rama Hajrizi.
7. On 1 June 2015 the Court informed the Applicant about the registration of the Referral and requested the Applicant to submit the power of attorney for Mr. Zafir Kryeziu and to clarify his Referral by specifying the last decision that he challenges. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 4 June 2015 the Applicant replied to the Court. The Applicant notified the Court that he revoked the authorization of Mr. Zafir Kryeziu and submitted Judgment Rev. no. 27/2015 of the Supreme Court of 12 February 2015.
9. On 1 July 2015 the President appointed Vice-president Ivan Cukalovic, as a member of the review panel replacing Ex-president Enver Hasani whose mandate as Constitutional Judge ended on 26 June 2015.
10. On 8 July 2015 the Review Panel endorsed the Report of the Judge Rapporteur and unanimously recommended to the Court the Referral to be declared inadmissible.

Summary of facts

11. On 11 November 2005 the Applicant filed a request with the Pension Fund of the Kosovo Energy Corporation (hereinafter: the Employer) to recognize his right to a disability pension.
12. On 24 November 2005 the Employer approved the Applicant's request for a disability pension starting from 1 December 2005 until 1 January 2011 (Decision no. 188/1).
13. On 5 January 2011 the Applicant filed a request with the Employer for the continuation of the disability pension or reinstatement to work. Since the Applicant did not receive a reply from the Employer, he filed a complaint with the Municipal Court in Prishtina on 21 January 2011.
14. On 27 February 2012 the Municipal Court in Prishtina (Judgment C. no. 113/11) rejected the Applicant's complaint as ungrounded. The Municipal Court held that the Employer had entirely fulfilled the obligations to the Applicant foreseen by Decision no. 188/1 of 24 November 2005. Thus, the Applicant's claim to continue the payment of the supplementary pension until retirement age was ungrounded.
15. The Applicant filed a complaint with the Court of Appeals of Kosovo because of substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.
16. On 11 December 2013 the Court of Appeals of Kosovo (Judgment Ac. no. 4585/2012) rejected the Applicant's complaint as ungrounded and upheld Judgment C. no. 113/11 of the Municipal Court in Prishtina of 27 February 2012. The Court of Appeals of Kosovo held that the employment relationship in accordance with the will of the parties was transformed into a contractual relationship where the Employer was obliged to pay disability pension for five (5) years to the Applicant. This obligation had been fulfilled by the Employer.
17. The Applicant filed a request for revision with the Supreme Court because of substantial violation of the provisions of the contested procedure and erroneous application of the substantive law.
18. On 12 February 2015 the Supreme Court (Judgment Rev. no. 27/2015) rejected the Applicant's request for revision as ungrounded. The Supreme Court held that the Applicant was retired based on his request and he did not file any complaint with the Committee for Reconsideration of Disputes against the decision on disability pension. It further considers that the Employer had fulfilled his obligation in accordance with the Decision on Disability Pension of 24 November 2005.

Applicant's allegations

19. The Applicant state in his Referral the following *“Based on the judicial decisions, from the decision of the Municipal Court to the decision of the Supreme Court, these decisions are in my favor, but until now I have not been able to realize my elementary rights from the employment relationship based on the provisions of the Constitution of the Republic of Kosovo.”*

Admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, it is necessary for the Court to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

21. In this respect, the Court refers to Article 48 [Accuracy of the Referral] 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.”

22. The Court also refers to Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim;”

23. The Court notes that in the present case the Applicant complains that the Judgment of the Supreme Court (Rev. no. 27/2015 of 12 February 2015) has violated his right to work.

24. The Court recalls that in other cases (v. g. KI40/09) it had adjudicated the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that the current Referral KI41/15 differs from the afore-mentioned cases (v. g. KI40/09). In fact, in these cases, KEK and former employees signed an agreement on temporary compensation until the establishment of the Kosovo Invalidity Pension Fund, thus with a reference to a uncertain date; while, in the current case KI41/15, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date (See Case KI50/14, Applicant: *Shemsi Bekteshi*, Resolution on Inadmissibility of 10 November 2014).
25. In the present case, the Court notes that the regular courts have given clear reasons for their decisions and that the Applicant himself filed a request for disability pension which the Employer agreed upon for five (5) years.
26. Therefore, the Applicant has not substantiated his allegation on constitutional grounds and did not provide evidence indicating that the challenged decision violated his rights and freedoms.
27. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken (see case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
28. As to the present case, the Court does not find that the relevant proceedings before the regular courts were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
29. The Court concludes that the Applicant's referral is manifestly ill-founded pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) 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 Rules 36 (1) (d), 36 (2) and 56 (b) of the Rules of Procedure on 8 July 2015, unanimously :

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Applicant;
- 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

Snezhana Botusharova



President of the Constitutional Court

Arta Rama-Hajrizi