



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

Prishtina, 10 November 2014
Ref. No.:RK724/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI50/14

Applicant

Shemsi Bekteshi

**Constitutional review of
Judgment Rev. Nr. 277/2013 of the Supreme Court
dated 6 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. Shemsi Bekteshi residing in Dumnica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. no. 277/2013 of the Supreme Court of the Republic of Kosovo (hereinafter, Supreme Court), dated 6 December 2013, which was served on him on 19 February 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly "*denies the right to Article 46 of the Constitution*".

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 19 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 1 April 2014, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Kadri Kryeziu.
7. On 15 May 2014, the Court sent a copy of the Referral to the Supreme Court.
8. On 15 September 2014, the President of the Court replaced Judge Rapporteur Robert Carolan, with Judge Almiro Rodrigues.
9. 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

10. On 30 May 2005, the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicant's request for pension under category "A" (Decision no. 90/04) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
11. The abovementioned decision determined that the payment of the pension for the Applicant will commence on 1 June 2005 and end on 1 July 2010, while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.
12. According to the submitted documents, no appeal was filed against this decision.
13. After 1 July 2010 and as specified in the agreement, KEK terminated the payment of the pension of the Applicant.

14. The Applicant submitted a claim before the Municipal Court in Prishtina.
15. On 2 February 2011, the Municipal Court in Prishtina (Judgment C. no. 2256/2010) rejected as ungrounded the claim submitted by the Applicant stating that “*KEK has fulfilled compensation as specified in the agreement and that no appeal was filed when the agreement was signed*”.
16. The Applicant submitted an appeal to the Court of Appeal in Prishtina against the judgment of the Municipal Court.
17. On 27 May 2013, the Court of Appeal (Judgment Ca. no. 4022/2012) rejected as ungrounded the appeal and upheld the judgment of the Municipal Court dated 2 February 2011.
18. The Applicant submitted a request for revision to the Supreme Court of Kosovo.
19. On 6 December 2013, the Supreme Court (Judgment Rev. no. 277/2013) rejected as ungrounded the revision.
20. The Supreme Court held:

“The Supreme Court of Kosovo assesses that the lower instance courts have correctly concluded that the claimant himself applied to for the disability pension I-st category and the request was approved by the respondent and according to decision no. 90/4 of 30 May 2005, the payment of pension started on 1 June 2005 and was terminated on 1 July 2010, at the amount of €105 per month, until the applicant turns 65 or 60 months of pension payment. The claimant could have filed an appeal against this decision within 15 days from the day of its receipt, the commission for review of disagreements through administration of Pension Fund, but has not filed the appeal and received the pension until 1 July 2010. This court assesses that after the payment of compensation of salary for 60 months, the respondent has no further obligation since it has fulfilled its legal obligation, which derives from the abovementioned decision. As per Article 11.1 under (b) of Regulation 2001/27 for Essential Labor Law in Kosovo, provides that termination of employment contract can be conducted beside others with written agreement between employee and employer, thus in the present case it is assessed that claimant with his signature in ruling of the respondent no. 90/4 and non-challenging according to legal remedy, is his will to turn the employment relationship into another legal relationship.”

...

“The allegations that the respondent has not offered to the claimant the decision in written for termination of employment relationship with legal remedy, by which the claimant was deceived hoping that after his cure and rehabilitation will be able to return to work, as it is provided by provision of Article 2 under (b) of Statute of Supplementary Pension Fund, the Supreme Court of Kosovo, assessed as ungrounded, since the same has applied himself for the disability pension and himself has signed the contested decision in which it is emphasized that the abovementioned

decision replaces all up to now acts signed between KEK and the user, and which the claimant has not appealed according to given legal remedy”.

Applicant’s allegation

21. The Applicant claims that the Judgment of the Supreme Court of Kosovo “*violates his right guaranteed by Article 46 of the Constitution of the Republic of Kosovo in conjunction with Article 1 of Protocol of European Convention of Human Rights, and violation of Article 31 of the Constitution in conjunction with Article 6 of European Convention for Human Rights*”.
22. The Applicant alleges that “*the provision of Article 2, item b of the Statute of KEK Disability Pension Fund were not correctly applied in which it was provided that in case at the disabled pensioner is written (rehabilitated) and whose cure is concluded by IMP, then the employ enjoys the right of returning to work. It was not taken into account the fact that the Commission of KEK’s IMP was not competent for announcement of claimant as invalid of the first category due to the fact that this right according to the law has only the Professional Commission of Ministry of Labor and Social Welfare*”.
23. In addition, the Applicant requests from the Constitutional Court to “*annul the judgments of the lower Courts and order that the Applicant be returned to work*”.

Admissibility of the Referral

24. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
25. In this 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 and what concrete act of public authority is subject to challenge.
26. The Court also takes into account Rule 36 (1) c) and (2) b) of the Rules of Procedure, which foresees:

(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: b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.
27. In this respect, the Court notes that the Applicant has not substantiate a claim on constitutional grounds and has not provided evidence proving that her fundamental rights and freedoms have been violated by the regular courts.
28. The Court can only consider whether the evidence 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, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).

29. The Court notes that the Supreme Court sufficiently reasoned its Judgment and thus the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
30. The Court recalls that in other cases (v.g. KI40/09) it was adjudicated regarding the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that this current Referral KI50/14 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 KI50/14, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date.
31. The Court considers that the Applicant did not clarify why and how his right to property as guaranteed by Article 46 of the Constitution has been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
32. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain [GC]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
33. Therefore, pursuant to Rule 36.(1).c) of the Rules of Procedure, the Referral is manifestly ill-founded and thus it is inadmissible.

FOR THESE REASONS

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

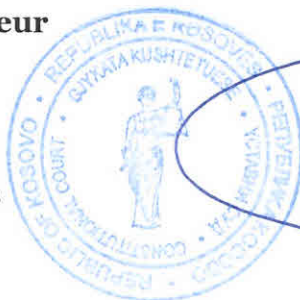
DECIDES

- 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



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani