



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 22 January 2015
Ref. No.:RK750/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI60/14

Applicant

Tomë Krasniqi

**Constitutional Review of Judgment, Rev. no. 35/2014 of the Supreme
Court of 12 February 2014**

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 Applicant is Mr. Tomë Krasniqi (hereinafter, the Applicant) residing in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 35/2014 of 12 February 2014, which was served on the Applicant on

Subject matter

3. The subject matter is constitutional review of the challenged decision, which has allegedly violated the Applicant's rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely *Article 23 [Human Dignity, Article 24 [Equality Before the Law] , Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation]* and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR), *Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property] and Article 9 of the International Covenant on Economic, Social and Cultural Rights (hereinafter, ICESCR).*
4. Furthermore, the Applicant requests the Court not to have his identity disclosed. The applicant refers to Article 36 [Right to Privacy] of the Constitution, Article 17 [Principle of Publicity] of the Law and Articles 1 [Obligation to respect Human Rights] and 14 [Prohibition of Discrimination] of the ECHR, without providing any reason for such request.

Legal basis

5. 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

6. On 31 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 3 April 2014 the President of the Court by Decision, GJR. KI60/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI60/14 appointed the Review Panel composed of Judges, Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
8. On 13 May 2014 the Court informed the Applicant on the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 15 September 2014, the President by Decision No. GJR. KI60/14 appointed Judge Ivan Čukalović as member of the Review Panel replacing Judge Robert Carolan.

10. On 17 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

11. The factual basis of the referral KI60/14 is the same as the one of the referral KI39/11 also filed with the Court by the Applicant. This referral was rejected as inadmissible for non-exhaustion of all legal remedies (see, Resolution on Inadmissibility KI39/11 of 15 January 2013).
12. On 11 June 1998 the Pension and Disability Insurance Fund of Kosova (decision no. 181-1/98) recognized the Applicant's right to pension as of 3 May 1998.
13. The Applicant enjoyed the right to retirement pension until November 1998, but due to the circumstances in Kosovo in early 1999, the Applicant's right to retirement pension was terminated without any legal ground.
14. On 4 May 2007 the Applicant submitted a claim to the Basic Court in Prishtina (formerly known as Municipal Court) against the Ministry of Labour and Social Welfare claiming that the former is obliged to compensate and continue with the payments in accordance with decision no. 181-1/98 of 11 June 1998.
15. On 17 January 2013 the Basic Court (Judgment C. no. 1155/2007) rejected the claim submitted by the Applicant as ungrounded and held that:

"The Court considers that the respondent, the Republic of Kosovo – Ministry of Labour and Social Welfare, Prishtina, lacks passive legitimacy in this civil case also due to the fact that the claimant, as per case files, has not entered into any legal relationship with the respondent, and that there is no legal provision on the obligation of the respondent to accept the obligations of the pre-war institutions, which operated in accordance with the legislation of the Republic of Serbia, ultimately until June 1999. According to Article 1.1 of UNMIK Regulation no. 1999/1 on authorizations of the Interim Administration in Kosovo (entering into force on 10 June 1999), all legislative and executive powers in Kosovo were assumed by UNMIK, as lead by the SRSG. Upon such regulation, Provisional Institutions of Self-Government of Kosovo were established to ensure autonomous and democratic governance at municipal and central levels".

16. The Applicant filed an appeal to the Court of Appeals in Prishtina *"due to substantial violation of the provisions of the law on contested procedures"*.
17. On 7 October 2013, the Court of Appeal (decision CA. no. 1144/2013) rejected the appeal submitted by the Applicant as ungrounded and upheld the Judgment of the Basic Court C. no. 1155/2007 of 17 January 2013.
18. The Court of Appeals held that:

"This Court also approves the legal stance of the first instance court to be regular and grounded upon law, since the challenged judgment is not

rendered by a substantial violation of contested procedure provisions as per Article 182, item 2 of the LCP, violations which are reviewed by the second instance court ex officio, as per Article 194, of the LCP. Due to regular application of provisions, and full and fair ascertainment of the factual situation, which cannot be put to question by any of the appellate allegations, the first instance judgment contains no substantial violation”.

[...]

“The UNMIK Regulation no. 200/10 had established an Administrative Department of Health and Social Welfare, a department which did not succeed any of the institutions operating in Kosovo before the war, which means that this institution is neither a successor of the Self-Governing Interests Union for Pension and Invalidity Insurance of Kosovo, a decision by which the claimant had enjoyed his rights to pension. It is a notorious fact that the respondent had created the Kosovo Social Security fund no. 3/2001. Nevertheless, the Pension Fund before the war, and the current Kosovo Pensions Fund have no succession in between, and therefore, the respondent has no obligation to pay the pensions from a fund was taken by the Serbian state, an issue which will be subject to agreements between the Kosovo and the Serbian state, since the funds mentioned by the claimant is a fund belonging to Kosovo citizens, since all citizens contributing to such a fund are entitled to be compensated by such a fund.”

19. The Applicant filed a request for revision with the Supreme Court against the Judgment of the Court of Appeals.
20. On 12 February 2012 the Supreme Court (Judgment Rev. no. 35/14) rejected as ungrounded the Applicant's request for revision by concluding that:

“The lower instance courts have properly applied contested procedure provisions and the material law when concluding that the claim suit of the claimant is ungrounded, and that the judgments mentioned do not contain any substantial violation of contested procedure provisions, which are reviewed ex officio by the court within the bounds of Article 215 of the LCP”.

[...]

“According to UNMIK Regulation no. 2001/35, the Pension Administration of Kosovo was established as an administrative unit within the Interim Department of Labour and Social Welfare, thereby determines the competency and responsibilities of the Pension Administration as a new and independent authority, which administers the base pensions, according to which Regulation, the Kosovo Pension Administration is not mandated with any responsibility related to the pre-war period pensions. Regulation no. 2005/20 of 29 April 2005, amending the UNMIK Regulation no. 2001/35 on Pensions in Kosovo, Article 39, provides that this regulation supersedes any applicable legislative provision in contradiction with it, and entering into force on 29 April 2005, and the Law amending UNMIK Regulation 2005/20, amending UNMIK Regulation no. 2001/35 on the Kosovo Pension Fund, by which the Law on Pension Funds of Kosovo was

approved, provided on an independent legal entity, and such law does not provide that this fund is a legal successor of the former Republican Fund for Pension and Invalidity Insurance – Branch in Prishtina, which had operated until June 1999, and with the deployment of international administration, ceased to operate within the Kosovo territory, and therefore, according to the findings of this Court, the respondent had no material civil relations with the claimant, and this means that the respondent lacks passive legitimacy in this legal matter, since the respondent bodies are new legal entities, and not linked with the ones operating before the war in Kosovo, and meanwhile, the claim suit of the claimant is related to the relations created according to the former Pension Fund, and therefore, the lower instance courts have properly found that the claim suit is ungrounded, and as such, they rejected the claim since the respondent lacks passive legitimacy to be party in this dispute”.

Applicant's allegations

21. The Applicant alleges that “he has obtained his right for pension on the basis of the applicable Law on Pension and Disability Insurance, as published in the Official Gazette of the SAPK, no. 26/83, of 30 June 1983, which is also applicable pursuant to UNMIK Regulation no. 1999/24”.
22. Furthermore the Applicant claims that “UNMIK Authorities, and later also the authorities of the Republic of Kosovo were bound, immediately after the war, to ensure that the Applicant regularly receives his pension payments, as obtained before 1999, but so far, the authorities of the Republic of Kosovo have not observed or enforced the legal obligation”.
23. Thus, based on the abovementioned, the applicant alleges that the judgments of the lower instance courts have violated the following rights:

a) Violation of rights guaranteed by the Constitution:

Article 23 [Human Dignity, Article 24 [Equality Before the Law] , Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation]

b) Violation of rights according to international law:

ECHR

Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property].

ICESC

Article 9

24. In conclusion, the Applicant requests from the Court that *“that his pension, as obtained on the basis of paid contributions, be paid in proportion with the contributions paid during his working years, on the basis of the labour legislation and years of experience”*.

Admissibility of the Referral

25. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
26. In this respect, the Court 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:

[...]

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

[...]”

27. The Court notes that the Applicant’s referral alleges violation of Article 23 [Human Dignity, Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation] of the Constitution, Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property] of the ECHR and Article 9 of the ICESCR.
28. Nevertheless, the Court also notes that the Applicant has failed to clarify how and why these constitutional rights were violated by the challenged decision. The dissatisfaction with the decision or a mere mentioning of articles and provisions of the Constitution are not sufficient to raise an allegation of a constitutional violation. When alleging constitutional violations, the Applicant must provide convincing and well-reasoned argument in order for the referral to be grounded.
29. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or 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).
30. 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.

31. 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).
32. The Court considers that the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
33. The Judgment of the Supreme Court has provided reasoning on the facts of the case and their findings.
34. The Court finds that the Applicant has not substantiated and justified its allegation for violation of the Constitution by the challenged decision.
35. Therefore, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rules 36 (1) c) of the Rules of Procedure.
36. Furthermore, the Applicant's request for not having his identity disclosed should be rejected as ungrounded.

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 17 September 2014, unanimously

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani