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

Prishtina, 10 August 2015
Ref. no.: RK 817/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI69/14

Applicant

Bajram Zogiani

Constitutional Review of the Judgment, Rev. no. 276/2013, of the Supreme Court of the Republic of Kosovo of 18 November 2013

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
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Bajram Zogiani, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment (Rev. no. 276/2013 of 18 November 2013) of the Supreme Court, which rejected as ungrounded his request for revision.

3. The challenged decision was served on the Applicant on 28 January 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely *"Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 49 [Right to Work and Exercise Profession] and his rights guaranteed by the European Convention of Human Rights (hereinafter: ECHR), namely by Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy]."*

5. The Applicant also refers to the Universal Declaration of Human Rights and the European Social Charter without citing any specific article of these two documents. He only refers to *"the rights of employees to compensation"* in general.

Legal basis

6. 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

7. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 6 May 2014, the President of the Court by, Decision no. GJR. KI69/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI69/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 26 May 2014, the Court notified the Applicant of the registration of the Referral and requested that he submits a copy of the receipt, indicating the date when the Judgment (Rev. no. 276/2013, of 18 November 2013) of the Supreme Court was served on him. On the same date, the Court sent a copy of the Referral to the Supreme Court.

10. On 29 May 2014, the Applicant submitted the document requested by the Court.

11. On 12 September 2014, the Applicant, on his own initiative, submitted additional information to the Court.

12. On 26 June 2015, the President of the Court, by Decision no. GJR. KI69/14, appointed Judge Ivan Čukalović as Judge Rapporteur, replacing Judge Kadri Kryeziu whose mandate as Constitutional Court Judge ended on 26 June 2015. On the same date, the President of the Court, by Decision no. KSH. KI69/14, appointed herself as a member of the Review Panel, replacing Judge Ivan Čukalović.

13. On 3 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

14. Before 1999, the Applicant was employed in the publicly owned enterprise Electro Economy of Kosovo. He was employed on a contract of indefinite duration in the capacity of the Secretary of the division of "Montimi Kosova".

15. On 6 September 1990, the Electro Economy of Kosovo (Decision no. 1448) suspended the Applicant from work due to violations of work obligations, until the procedure on determination of alleged violations would be finished.

16. On 14 September 1990, the Applicant filed an objection with the Electro Economy of Kosovo relevant bodies against the abovementioned decision.

17. On 1 October 1990, the Electro Economy of Kosovo (Decision no. 1776) rejected as ungrounded the Applicant's objection and upheld the decision on his suspension from work. On the same date, the Electro Economy of Kosovo rendered another Decision (no. 1769) by which the Applicant was dismissed from work.

18. In 1991, the Applicant sued the Electro Economy of Kosovo before the Basic Court of the Joint Labour [the competent court on labour disputes], requesting the annulment of the Decision on his dismissal from work. According to the case file, the Applicant failed to receive a final decision regarding this lawsuit.

19. On 1 July 1999, the Electro Economy of Kosovo was reconstituted into the Kosovo Energy Corporation (hereinafter: KEK). The Applicant took up a position in KEK equivalent to his previous position within the Electro Economy of Kosovo.

20. Subsequently, the Applicant filed a request with the Municipal Court in Prishtina for renewal of the case file that had not been decided by the previous competent court.

21. On 10 April 2006, the Municipal Court in Prishtina (Decision C1. No. 440/93) approved the Applicant's request for renewal of the case file.

22. After receiving the decision that the case file was renewed, the Applicant filed a claim with the Municipal Court in Prishtina against KEK. He requested the annulment of the Decision (no. 1769 of 1 October 1990) of the Electro Economy of Kosovo through which he was dismissed from work and the payment of monthly salaries from 1 October 1990, the date when he was dismissed, until 1 July 1999, the date when he returned to his working place.

23. On 14 May 2010, the Municipal Court in Prishtina (Judgment. C1. No. 124/2006) approved the statement of claim of the Applicant as grounded and annulled as unlawful the Decision (no. 1769 of 1 October 1990) of the Electro Economy of Kosovo on dismissal of the Applicant from work. On that occasion, the Municipal Court in Prishtina obliged KEK to pay to the Applicant the monthly salaries due in arrears, in accordance with his statement of claim, including the costs of proceedings.

24. KEK filed an appeal against the Judgment of the Municipal Court with the Court of Appeal *"due to substantial violations of the contested procedure provisions, erroneous and incomplete determination of the factual situation, and erroneous application of the substantive law"*. In the appeal, KEK requested that the Court of Appeal modifies the Judgment of the Municipal Court and rejects the Applicant's claim as ungrounded.

25. On 14 June 2013, the Court of Appeal (Judgment Ac. No. 5140/2012) approved the appeal filed by KEK and modified the Judgment of the Municipal Court with the following reasoning:

> *"[...] The legal stance of the first instance court on the approval of the claimant's statement of claim as fair and lawful is not approved by the Court of Appeal [...].*
> *[...] The Court of Appeal holds that now the respondent [KEK] is not a participant in the legal obligational relationship in this legal matter, is not a subject in the legal material relationship, from where derives the claimant's right and on this ground does not exist the legal succession between the former Kosova Mont Electro-economy of Kosovo [...] with now the respondent Kosovo Energy Corporation in Prishtina. Therefore, the respondent lacks real passive legitimacy in this legal matter, and for this reason, the statement of claim against the respondent is ungrounded. [...] In fact, the respondent is not in the capacity of the Employer in relation to the claimant, respectively the respondent's body did not take any unlawful action, by which the claimant would be injured by not receiving the personal income for the abovementioned period, but this damage was caused by unlawful actions of Kosova Mont Electro-economy of Kosovo, which was in capacity of an Employer and which compensated the claimant's personal income before the contested period [...]".*

26. The Applicant filed a request for revision against the Judgment of the Court of Appeal with the Supreme Court *"due to violation of the contested procedure provisions and erroneous application of the substantive law"*.

27. On 18 November 2013, the Supreme Court (Judgment Rev. no. 276/2013) rejected the request for revision filed by the Applicant as ungrounded by reasoning that:

> *"[...] The second instance court has correctly applied the provision of Article 201 para. 1 item (d) of LCP* [Law on Contested Procedure] *when it modified the Judgment of the first instance court and rejected claimant's statement of claim as ungrounded, as a new reality in Kosovo has been created after the war, and now the respondent cannot be a party in the proceedings, because the claimant was fired by the decisions of Electro-economy of Serbia, the decision of the RS of Serbia, published in the (Official Gazette of RS of Serbia", no. 19.7.1990) at the time when the leading structure was changed and the interim management was imposed.*
> *[...]*
> *The allegations in the revision, that by the very fact that after the war, the claimant's employment relationship with the respondent was extended in the same working place, there is an obligation of the respondent for compensation of damage the claimant suffered, due to termination of his employment relationship in unlawful manner, by the fact that the respondent is not responsible, namely it does not have any obligation for compensation of unpaid personal income, which damage was caused by illegal actions of the former "Kosova Mont" Electro-economy of Kosovo [...]".*

Applicant's allegations

28. The Applicant claims that the Supreme Court, by rejecting his request for revision, has *"violated the rights and interests under the employment relationship, protected by the Constitution and laws".*

29. Consequently, the Applicant alleges that the Supreme Court has violated his rights guaranteed by the Constitution and the ECHR in regards to *"general principles, equality before the law, the right to fair and impartial trial, the right to legal remedies and the right to work and exercise the profession".*

30. In relation to these allegations, the Applicant states that *"I base my request also on the Judgment of the Municipal Court in Prishtina C1. No. 124/2006, dated 14.05.2010 by which [...] it was determined that KEK is the inheritor and successor of all assets but also of the rights and obligations of Electro-economy of Kosovo".* In this regard, he requests from Court that *"based on this fair Judgment of the Municipal Court, I request the payment of my salaries [...]".*

31. The Applicant alleges that his case is similar to case KI08/09 (See, KI08/09, *The Independent Union of Workers of IMK Steel Factory in Ferizaj,* the Judgment of 17 December 2010). Regarding this case, the Applicant refers to paragraphs 19, 20, 21, 48, 51, 60 and 66 of this Judgment.

32. The Applicant has also submitted to the Court several decisions of the regular courts in Kosovo which, according to him, are similar or identical to his case and for the same lawsuit the regular courts have decided *"in favor of the*

claimants". Based on these decisions, he requests the Court to *"apply the case law in order that similar cases are decided in the same way and not that I am discriminated against."*

33. Finally, the Applicant addresses the Court with the following request:

> *"[...]*
> *a) to declare my Referral admissible, and*
> *b) to act in accordance with Judgment C1 No. 124/2006, of the Municipal Court in Prishtina, dated 14.05.2010, which approved my statement of claim and for this I request: the payment of monthly salaries starting from the date of termination of my employment relationship on 01.10.1990 until the date of my reinstatement to work on 01.07.1999 [...]".*

Assessment of the admissibility of the Referral

34. The Court first examines whether the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure have been met.

35. 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".*

36. In addition, the Court refers to Rule 36 (2) (b) and (d) of the Rules of Procedure, which provide that:

> *(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, or [...]*
> *(d) the Applicant does not sufficiently substantiate his claim.*

37. As stated above, the Applicant challenges the Judgment (Rev. no. 276/2013, of 18 November 2013) of the Supreme Court alleging violations of his rights pertaining to general principles, equality before the law, the right to fair and impartial trial, the right to legal remedies, the right to work and exercise a profession as guaranteed by the Constitution and the ECHR, respectively.

38. In the present case, the Court notes that, in essence, the Applicant's main request is to uphold the Judgment (C1. no. 124/2006, of 14 May 2010) of the Municipal Court in Prishtina, which was in his favor and which, according to the Applicant, *"is a fair judgment."*

39. In this regard, the Court notes that the Court of Appeal reasoned its decision when it modified the Judgment of the Municipal Court and rejected the statement of claim of the Applicant as ungrounded, referring to the provisions of the law. Moreover, the Court also notes that in the assessment procedure of

the Applicant's request for revision, the Supreme Court reasoned its decision regarding the specific allegations of the Applicant brought against the Judgment of the Court of Appeal.

40. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegations of a substantial violation of the contested procedure provisions and of the erroneous application of the material law, allegedly committed by the Court of Appeal. In its Judgment, the Supreme Court pointed out that:

> *"[...] in the present case* [the claim that] *there is continuity of claimant's employment relationship with the respondent [KEK] and that the respondent has passive legitimacy of the parties to the dispute as it is the legal successor of the former company where the claimant worked, is inadmissible, due to the fact that the party has subject matter legitimacy only if it is participating in the legal material relationship, from which the dispute has arisen. The respondent has no passive legitimacy in this case as it has not terminated the claimant's employment relationship and it is not a party to the legal material relationship, so that the claimant is not entitled to seek legal protection of the violated subjective right [...] ".*

41. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the public authorities, unless and in so far as it may have infringed the rights and freedoms protected by the Constitution (constitutionality).

42. The Constitutional Court reiterates that it is not 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, *mutatis mutandis, Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28; see also Constitutional Court in case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

43. The Constitutional Court can only consider 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 u. United Kingdom*, Application No. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991).

44. The Court finds that the proceedings before the Court of Appeal and the Supreme Court have been fair and reasoned (See, *mutatis mutandis*, Shub *vs. Lithuania,* No. 17064/06, ECHR, Decision of 30 June 2009).

45. In addition, the Court notes that the Applicant alleges that his case is similar to Case no. KI08/09, (See, Case KI08/09, *the Independent Union of Workers of IMK Steel Factory in Ferizaj*, Judgment of 17 December 2010). However, he does not provide any additional argument or clarification regarding this allegation.

46. Based on the submitted documents and the conducted procedures, the Court considers that the Applicant's Referral differs from the aforementioned Judgment considering that the latter concerned the non-execution of a decision which had become final and as such had become *res judicata*; whereas, the Applicant's case does not concern the non-execution of a final decision but concerns the constitutional review of the contested decision of the Supreme Court, which the Applicant is dissatisfied with.

47. Accordingly, the Court finds that the Applicant's allegation, that his case is similar to case no. KI08/09 is ungrounded.

48. Finally, the Court notes that the Applicant has also submitted several decisions of the regular courts in Kosovo, which he has qualified as *"examples"* based on which this Court must allegedly act in order to *"apply the case law [...]."*

49. In relation to this submission, the Court emphasizes that *"[...] save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by national courts (see, for example, Ādamsons v. Latvia, no. 3669/03, para. 118, 10 May 2007). Similarly, on this subject, it is not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings; it must respect the independence of those courts (see Engel and Others v. The Netherlands, 8 June 1976, para. 103, Series A no. 22; Gergório de Andrade v. Portugal, no. 41537/02, para. 36, 14 November 2006; and Ādamsons, cited above, para. 118)."*

50. Moreover, the Court observes that the attached decisions of the regular courts pertain to different proceedings before the regular courts, which do not necessarily represent final decisions and as such are not relevant for the review of the constitutionality of the challenged decision.

51. Accordingly, the Court finds that the Applicant's allegation, that his case is similar to the attached decisions of the regular courts is ungrounded.

52. In sum, the Court considers that the Applicant's allegations of violation of his rights and freedoms guaranteed by the Constitution and the ECHR are ungrounded and unsubstantiated, and therefore they are manifestly ill-founded.

53. For the reasons above, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and that the Applicant did not sufficiently substantiate his claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and 36 (2) (b) and (d), on 10 August 2015, 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 **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi