



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

Prishtina, 7 October 2014
Ref. No.:RK710/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI73/14

Applicant

Xhafer Dvorani

**Constitutional Review of the Decision Ac. no. 2770/2013 of the Court of
Appeals of Kosovo, dated 17 March 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was filed by Mr. Xhafer Dvorani from Terstenik village, Municipality of Glogoc (hereinafter, the Applicant) and represented by Mr. Bashkim Latifi, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision Ac. no. 2770/2013 of the Court of Appeals of the Republic of Kosovo (hereinafter, the Court of Appeals), dated 17 March 2013, which was served on the Applicant on 7 April 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights to *Equality Before the Law and Judicial Protection of Rights (Articles 3 and 24, and 54 of the Constitution)*.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution; Article 22 and 47 of the Law No. 03/121 on the 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 16 April 2014, the Applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 6 May 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding Judge), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 27 May 2014, the Court notified the Applicant on the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
8. On 16 September 2014, 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

9. On 12 August 2013, the Branch in Glllogoc of the Basic Court in Prishtina (Decision C. nr. 143/013) rejected as inadmissible the claim of the claimant concerning two jubilee salaries and on behalf of two monthly salaries relating to retirement along with the legal interest and proceeding costs, because "*the claim was submitted before the permitted legal remedies (...) had been exhausted*".
10. The Applicant submitted a complaint with the Court of Appeals against that Decision, due to "*an erroneous or incomplete ascertainment of the factual situation whereby the court has erroneously ascertained a crucial fact, namely when such fact was not ascertained at all*".

11. On 17 March 2014, the Court of Appeals (Ac. nr. 2770/2013) rejected the complaint of the claimant as ungrounded and upheld the Decision of the first instance. The Court of Appeals concluded as follows:

"[...] the Court has found that such a claim shall be rejected as inadmissible in terms of the provisions of Article 391 item f) of the LCP, because the claimant has not complied with the obligations referred to in Article 78 and 79 of the Law on Labour of the Republic of Kosovo. (...) in this case the claimant did not address to the relevant body of the respondent, an obligation that has been over-passed by the claimant".

Applicant's allegations

12. The Applicant claims that "his rights stated in (...) Article 3 (Equality Before the Law), Article 22 (Direct Applicability of International Agreements and Instruments) Article 24 (Equality Before the Law), Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, as well as the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols have been violated".
13. The Applicant alleges that "[...] The Courts should have adjudicated without being influenced, in compliance with the hierarchy of legal acts set forth in the provisions of Article 4 of Law No. 03/1-212 on Labour, which represent a source of workers' rights, namely: Law on Labour, Collective Agreement, Employer's Internal Act and Labour Contract and which must comply with the provisions of the Law on Labour and that the provision of Article 54 of the Constitution of the Republic of Kosovo guarantees to the employees the judicial protection of the rights, providing that "Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."
14. The Applicant requests the Constitutional Court "[...] to oblige the respondent, Municipality of Glllogoc – Education Department, in Glllogoc, to pay to the claimant the debt on behalf of two jubilee salaries and on behalf of two monthly salaries relating to retirement, along with the legal interest and proceeding costs".

Admissibility of the Referral

15. The Court initially reviews whether the Applicant has fulfilled the admissibility requirements set forth in the Constitution, the Law and the Rules of Procedure.
16. In this respect, the Court refers to Article 48 of the Law on the Court 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.

17. The Court also refers to Rules 36 (1) c) and (2) d) of the Rules of Procedure, which provide:
- (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:*
 (...) (d) *the Applicant does not sufficiently substantiate his claim.*
18. The Court notes that the Applicant filed an appeal with the Court of Appeals “*due to essential violations of the provisions of the contested procedure*” allegedly committed by the first instance court. No allegation was made on a constitutional violation.
19. Moreover, the Applicant has not explained and proved how and why his rights and freedoms have been violated by the decision of the Court of Appeals which rejected his appeal as not grounded and confirmed the decision of the Basic Court.
20. In fact, the Applicant has not substantiated the allegation based on a constitutional violation and did not provide relevant evidence showing that his rights and freedoms protected by the Constitution have been violated by the challenged decision.
21. Furthermore, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) alleged to have been made by the Court of Appeals, except and to the extent they might have violated the rights and freedoms protected by the Constitution (Constitutionality). Therefore, it is not a duty of the Constitutional Court to act as a fourth instance court when considering the decisions made by regular courts. It is the latter’s role to interpret and apply the relevant rules of both the procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], No. 30544/96, para. 28, Report of the European Court on Human Rights [ECHR] 1999-I).
22. Therefore, the Constitutional Court cannot conclude that the relevant proceedings might have violated the rights and freedoms protected by the Constitution or they were, in any way, unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR, Decision on Admissibility of the Application No. 17064/06, dated 30 June 2009).
23. Consequently, the Referral is inadmissible, as it is manifestly ill-founded pursuant to Rule 36 (1), c) and (2), d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c) and (2) d) of the Rules of the Procedure, in its session held on 16 September 2014, unanimously

DECIDES

- I. TO DECLARE 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur


Almiro Rodrigues



President of the Constitutional Court


Prof. Dr. Enver Hasani