



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

Prishtina, on 21 March 2016
Ref. No.:RK909/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI74/15

Applicant

Ekrem Jakupi

**Constitutional review of Judgment Rev. no. 300/2014 of the Supreme
Court of Kosovo of 8 December 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Cukalovic, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Ekrem Jakupi from Prishtina (hereinafter, the Applicant) represented by Mr. Ekrem Agushi, a lawyer practicing in Prishtina.

Challenged decisions

2. The Applicant challenges Judgment Rev. No. 300/2014 of the Supreme Court of Kosovo of 8 December 2014 in connection with Judgment Ac. no. 3945/2012 of the Court of Appeal of Kosovo of 14 February 2014 and Judgment C1. No. 302/07 of the Municipal Court in Prishtina of 1 March 2012.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. No. 300/2014 of the Supreme Court of Kosovo of 8 December 2014 which was served upon the Applicant on 10 February 2015.
4. The Applicant alleges violation of Article 23 [Human Dignity] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) with regard to non-pecuniary compensation due to unlawful dismissal from work.

Legal basis

5. 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

6. On 10 June 2015 the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 3 August 2015 the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (presiding), Snezhana Botusharova and Bekim Sejdiu.
8. On 17 September 2015 the Court notified the Applicant about the registration of the Referral and asked him to submit evidence of the date of service of the challenged judgment. On the same day a copy of the Referral was sent to the Basic Court in Prishtina and the Supreme Court of Kosovo.
9. On 28 September 2015 the Applicant submitted evidence of the date of service of the last challenged judgment.
10. On 28 January 2016 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

11. On 20 October 2004 the Applicant was dismissed from work by his employer, ProCredit Bank in Prishtina.

12. On an unspecified date the Applicant filed a complaint with the then Municipal Court in Prishtina against ProCredit Bank pertinent to his dismissal from work.
13. On 22 March 2011 the Municipal Court in Prishtina, by Judgment C. no. 2142/09, annulled, as unlawful, the decision of ProCredit Bank terminating Applicant's employment relationship. On 4 May 2011 the Applicant was then reinstated to his work place.
14. On an unspecified date the Applicant filed a lawsuit with the Municipal Court in Prishtina against ProCredit Bank thereby claiming compensation for the alleged damages he suffered as a result of his unlawful dismissal from work for lost profits and non-pecuniary damages caused by psychological suffering and mental anguish related to his dismissal from work.
15. On 1 March 2012 the Municipal Court in Prishtina, by Judgment C1. No. 302/07, partially approved the Applicant's statement of claim by obliging ProCredit Bank to pay to the Applicant compensation for the pecuniary damage of lost profits for his unpaid salary, but rejected as ungrounded the Applicant's claim for compensation for non-pecuniary damage due to psychological suffering and mental anguish related to his dismissal from work. The trial court reasoned, *inter alia*, that: (i) Article 200 of the Law on Obligational Relations (hereinafter, the LOR) does not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work and (ii) the Applicant's statement of claim on this point is time-barred because it is filed beyond the statutory limitation for him to make such a claim.
16. On 26 March 2012 the Applicant filed an appeal with the then District Court in Prishtina against the judgment of the trial court thereby alleging essential violations of the procedural law, erroneous and incomplete assessment of factual situation and erroneous application of substantive law. The Applicant mainly alleged that the trial court did not take into account opinions of the medical experts about his psychological suffering and mental anguish related to his dismissal from work.
17. On 1 January 2013 the Law No. 03/L-199 on Courts entered into force. Pursuant to Article 17. 1. 2 of that Law: *"The Court of Appeals is established as the second instance court with territorial jurisdiction throughout the Republic of Kosovo. The seat of the Court of Appeals shall be in Prishtina"*.
18. On 14 February 2014 the Court of Appeal of Kosovo by Judgment Ac. no. 3945/2012 rejected the complaint of the Applicant as ungrounded and upheld the judgment of the trial court. The appellate court accepted the factual and legal assessment made by the trial court and adopted its reasoning by holding that Article 200 of the LOR did not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work.
19. On 11 November 2014 the Applicant filed a request for revision with the Supreme Court of Kosovo alleging erroneous application of substantive law by the courts of lower instance. The Applicant mainly alleged that lower courts

made an erroneous application of substantive law when they held that Article 200 of the LOR does not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work.

20. On 8 December 2014 the Supreme Court of Kosovo, by Judgment Rev. no. 300/2014 rejected as ungrounded the Applicant's request for revision of the judgment of the court of appeal.
21. The relevant part of the judgment of the Supreme Court reads:

“Based on the assessment of this Court the impugned judgment does not contain deficiencies which would enable one to challenge its legality as to the applicability of the substantive law...due to the fact that this type of injury in a labor dispute was not provided for by Article 200 of the LOR which was in force at the material time. The first paragraph of that Article expressly stipulates and enumerates – one by one – persons that are entitled to pecuniary compensation...that article provided for pecuniary compensation due to the hurt feelings in cases when the injured party are relatives of the deceased person, the person's injury to his body integrity, or when the person has suffered severe disability due to injury. This leads to conclusion that claims for non-pecuniary damage can be adjudicated only if the injury is manifested in one of the above-described ways... which based on the just assessment of the court of second instance is untenable. Given the fact that on the basis of law or case law, the right to non-pecuniary injury compensation due to the unlawful termination of the employment relationship, has not been accepted under the conditions set out by the law”.

Applicant's allegations

22. The Applicant alleges that the regular courts in their decisions in his case violated Articles 23 [Human Dignity] and 31 [Right to Fair and Impartial Trial] of the Constitution.
23. The Applicant alleges that: *“the regular courts have erroneously applied Article 200 of the former - LOR which was applicable until 20 December 2012 when the LOR of the Republic of Kosovo entered into force thus committing a grave violation of the applicant's rights guaranteed by Article 31 (2) of the Constitution”.*
24. The Applicant alleges that: *“the applicant's rights guaranteed by Article 23 of the Constitution were violated because the Supreme Court disregarded the notion of moral injury”.*
25. Moreover, the Applicant alleges that: *“the stance of the Constitutional Court on this matter is directly connected to the obligation of the state institutions to take more seriously the question of moral indemnification”.*
26. Finally, the Applicant asks the Court: (i) to declare his referral admissible, (ii) to hold a hearing in accordance with Rule 39 (2) of the Rules of Procedure, (iii) to hold that the Supreme Court has violated the applicant's rights guaranteed

under Article 23 of the Constitution and (iv) to determine any rights or liabilities to the parties in this procedure which the Constitutional Court deems reasonable and legally grounded.

Assessment of admissibility

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

28. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”

29. The Court also 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”.

30. The Court further takes into account Rule 36 (1) (d) and (2) (b) of the Rules of Procedure which specify:

(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:*

...

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

31. In the concrete case, the Court notes that regular courts reinstated the Applicant back to his workplace and ordered his employer – in the name of pecuniary damage - to compensate unpaid salaries to the Applicant; however, in accordance with the law applicable at the material time the regular courts rejected the Applicant’s statement of claim with regard to non-pecuniary damage.

32. In this connection, the Court notes that the Applicant alleges that: *“regular courts have erroneously applied Article 200 of the former - LOR which was applicable until 20 December 2012 when the LOR of the Republic of Kosovo entered into force thus committing a grave violation of the applicant’s rights guaranteed by Article 31 (2) of the Constitution”.*

33. The Court also notes that: (i) the regular courts reasoned that the law applicable at the material time did not list mental anguish experienced due to dismissal

from work as one of the grounds which warrants pecuniary compensation, (ii) the Applicant's request for non-pecuniary damage was time-barred because of a statutory limitation and (iii) the Applicant is basically complaining that the regular courts should have applied one legal provision instead of another.

34. In the light of the allegations made by the Applicant and the reasoning given by the regular courts, the Court considers that it is not its task to deal with errors of fact or law allegedly committed by regular court unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution. It may not itself assess the facts which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of fourth instance, which would be to disregard the limits imposed on its action. (See the Case of *Garcia Ruiz v. Spain*, Application no. 30544/96, [GC], Judgment of 21 January 1999, para. 28).
35. In fact, 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).
36. The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
37. The Court reiterates that its task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
38. Finally, the Court considers that the Applicant only enumerates and generally describes the content of constitutional provisions without substantiating exactly how those provisions were violated in his case as is required by Article 48 of the Law.
39. In these circumstances, the Court considers that the Applicant has not substantiated his allegations of a violation of his fundamental human rights guaranteed by the Constitution because the facts presented by him do not show in any way that the Supreme Court of Kosovo had denied him the rights guaranteed by the Constitution.
40. Consequently, the Referral, on a Constitutional basis, is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (b) of the Rules of Procedure.
41. As to the Applicant's request to hold an oral hearing, the Court refers to Article 20 of the Law:

“1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.

2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files”.

42. The Court considers that documents contained in the Referral are sufficient to decide this case as per wording of paragraph 2 of Article 20 of the Law.
43. Therefore, the Applicant’s request to hold an oral hearing is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, by majority, on 28 January 2016

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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


Robert Carolan



President of the Constitutional Court


Arta Rama-Hajrizi