



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

Pristina, 22 May 2017
Ref. No.:RK 1066/17

RESOLUTION ON INADMISSIBILITY

in

Case no. KI75/16

Applicant

**Kosovo National Theatre
Ministry of Culture, Youth and Sports**

**Request for constitutional review of Judgment Rev. No. 56/2016 of the
Supreme Court, of 17 March 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
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 was submitted by the Kosovo National Theatre - Ministry of Culture, Youth and Sports (hereinafter, the Applicant), which is represented by Shefqet Hasimi, senior legal officer in the State Advocacy Office.

Challenged decision

2. The Applicant challenges the Judgment Rev. No. 56/2016 of the Supreme Court of 17 March 2016, which rejected as ungrounded his appeal and upheld the Judgment of Municipal Court, of 16 October 2012.
3. The challenged Judgment was served on the Applicant on 14 April 2016

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly "*is contrary to the Constitution of Kosovo*".

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 (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

6. On 16 May 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 14 June 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
8. On 16 November 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 16 January 2017, 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

10. On 27 January 2004, QB filed a claim with the Municipal Court in Pristina, complaining that the Applicant had unlawfully interrupted the monthly monetary compensation enjoyed in accordance with Decision no. 139 of 5 October 2000, issued by the Applicant.
11. On 16 October 2012, the Municipal Court (Judgment C. no. 144/09) approved as grounded the statement of claim and obliged the Applicant to pay the material compensation mentioned in the Judgment.
12. The Applicant filed an appeal with the Court of Appeals, "*due to the essential violation of provisions of contested procedure, erroneous and incomplete*

determination of factual situation and erroneous application of substantive law”.

13. On 11 December 2015, the Court of Appeals (Judgment AC. no.1034/2013) approved the Applicant’s appeal and modified the Judgment of the Municipal Court, rejecting the statement of claim of the claimant in the Municipal Court.
14. Q.B. filed with the Supreme Court a request for revision due to “*essential violations of provisions of the contested procedure and erroneous application of the substantive law*”.
15. On 17 March 2016, the Supreme Court (Judgment Rev. no. 56/2016) approved as grounded the QB’s request for revision and modified the Judgment of the Court of Appeal. At the same time, the Supreme Court upheld the Judgment C. no. 144/09 of the Municipal Court.

Applicant’s allegations

16. The Applicant only claims that the Judgment of the Supreme Court “*is contrary to the Constitution of Kosovo*”.
17. The Applicant does not indicate which Article(s) of the Constitution have been breached by the challenged Judgment and, in particular, which rights and freedoms guaranteed by the Constitution have been violated.
18. The Applicant does not make any statement of relief sought from the Court.

Admissibility of the Referral

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
20. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:
 1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
 - (...)
 7. *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.*
21. However, the Court also refers to Article 48 [Accuracy of the Referral] 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.

22. The Court further refers to Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) of the Rules of Procedure, which foresees:
- (1) *The Court may only deal with Referrals 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.*
 - (...)
23. The Court recalls that the Applicant does not indicate what rights and freedoms he claims to have been violated. Furthermore, he does not indicate either which Article(s) of the Constitution have been breached.
24. The Court notes that the Applicant, when describing the facts of his Referral, he only refers to the Judgments of the different courts. In addition, when justifying his Referral and pointing out to the alleged breaches of the Constitution, he only mentions the Judgments of the Courts, without any analysis or consideration.
25. The Court considers that the Applicant is bringing before the Court the same grounds he brought before the regular courts. Those grounds pertain to the domain of legality. No ground on constitutionality is brought by the Applicant before the Court.
26. In that respect, the Court notes that all the grounds brought by the Applicant before the regular courts were answered and reasoned by these courts. Namely, the Supreme Court dealt extensive and comprehensively with the monthly material compensation and assessed its legality termination.
27. In fact, the Supreme Court considered that, since *“the establishment of Pension and Disability Insurance Fund in the Republic of Kosovo is determined by the Law on Disability Pension which is in process of compilation and approving in government and in the Assembly of Kosovo, the Supreme Court of Kosovo ascertains that still exists the obligation of the respondent to fulfill the obligation to the claimant in accordance with its Decision no. 139, of 5 October 2000, and it remains as such until the establishment and fictionalization of the above mentioned fund, respectively, until the claimant reaches the age of pension – the age of 65”*.
28. Furthermore, the Supreme Court found that *“the Court of the second instance erroneously applied the substantive law, therefore, it modified the Judgment of the second instance and decided to leave in force the Judgment of the first instance”*.

29. The Court reiterates that the determination of the factual situation and applicable law is a full jurisdiction of regular courts (matter of legality), and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments (matter of constitutionality). Therefore, it cannot act as a “fourth instance court” assessing the matter of legality. (See ECtHR case *Akdivar v. Turkey*, No. 21893/93, Judgment of 16 September 1996, para. 65. See also *mutatis mutandis* the Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
30. The Court notes that the Applicant has not showed, or even alleged, that the court proceedings, viewed in entirety, were unfair or arbitrary in order to the Court to consider any constitutional violation.
31. The Court reiterates that it cannot act as a fourth instance court and replace the role of the regular courts on interpreting and applying the pertinent rules of both procedural and substantive law. (See ECtHR cases *Garcia Ruiz vs. Spain*, No. 30544/96, Judgment of 21 January 1999; and *FcMetrebi vs. Georgia*, Judgment of 31 July 2007, par.31; See also Constitutional Court case KI 70/11 *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
32. The Court considers that the Applicant has not stated the facts of his Referral and has not build any constitutional allegation. Moreover, he failed to show that the proceedings before the regular courts, including the Supreme Court, were unfair or arbitrary or that his rights and freedoms have been violated.
33. Thus, the Court concludes that all the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure, have not been met.
34. Therefore, the Court finds that, in accordance with Rule 36 (1) d) and (2) b) of the Rules of Procedure, the Referral should be declared inadmissible as manifestly ill-founded on a constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (1) d) and (2) b), and 56 of the Rules of Procedure, in the session held on 16 January 2017, unanimously

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

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi