



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

Prishtina, 30 October 2014
Ref. no.: RK715/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI76/14

Applicant

Jakup Berisha

**Constitutional review of Decision Rev. Nr. 292/2013 of the Supreme
Court of the Republic of Kosovo dated 9 December 2013**

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 Referral was submitted by Mr. Jakup Berisha residing in Siqevë, Municipality of Prishtina (hereinafter, the Applicant). In the proceeding before the Constitutional Court (hereinafter, the Court) he is represented by Ms. Merita Bajraktari, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 292/2013 of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), dated 9 December 2013, which was served on 19 February 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly "*denies the right to Article 49 of the Constitution*".

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (2) 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 28 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 6 May 2014, the President of the Court, with Decision No. GJR. KI76/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI76/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 23 July 2014, the Court sent a copy of the Referral to the Supreme Court.
8. On 22 September 2014, the President replaced Judge Robert Carolan as a member of the review panel with Judge Altay Suroy.
9. On 23 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

10. On 8 November 2003, the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicants request for pension under category "A" (Decision no. 162) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
11. The abovementioned decision determined that the payment of the pension for the Applicant will commence on 1 September 2003 and end on 1 September 2008, while the amount of monthly pension shall be 105 Euros. Furthermore,

the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.

12. According the submitted documents, no appeal was filed against this decision.
13. After 1 September 2008, KEK terminated the payment of the pension of the Applicant as specified in the agreement.
14. The Applicant submitted a claim before the Municipal Court in Prishtina (hereinafter, the Municipal Court).
15. On 18 April 2012, the Municipal Court (Judgment C.no. 2206/2011) rejected the claim submitted by the Applicant stating that *“that the respondent had fully complied to its obligations to the claimant, and according to the decision, apart from the obligation of paying 60 monthly pensions at the amount of 105 Euros, has not assumed any other obligation to the claimant. Also, according to the Supplementary Pension Fund Statute, the obligations of the respondent towards any beneficiary expire at the moment of expiration of the period of 60 months of monthly pension payments. The Court also found that the claimant in no way objected the decision on the application for pension”*.
16. The applicant submitted an appeal to the Court of Appeal in Prishtina against the judgment of the Municipal Court (Judgment C.no. 2206/2011).
17. On 27 June 2013, the Court of Appeal (Judgment Ca. no. 4556/2012 rejected as ungrounded the appeal submitted by the Applicant and upheld the judgment of the Municipal Court dated 18 April 2012.
18. The Applicant submitted a request for revision to the Supreme Court of Kosovo.
19. On 9 December 2013, the Supreme Court of Kosovo (Judgment Rev. no. 292/2013) rejected as ungrounded the revision submitted by the Applicant.
20. The Supreme Court held:

“By this decision of the respondent, it was provided that the payment of pensions shall begin on 1.9.2003 and shall end on 1.9.2008, at a monthly amount of 105 €.Against this decision, the claimant could have filed a complaint with the Dispute Resolution Committee through the Pension Fund Administration, but never filed such complaint, and received pensions until 1.9.2008. This court finds that the claimant agreed that his working relationship would be transformed into another legal relationship, while the allegations in the revision, that the respondent never disputed the agreement mentioned, but pursuant to the KEK Supplementary Pension Fund Statute, Article 2, para 2, upon healing (rehabilitation), the claimant would enjoy the right to reinstatement to work, was reviewed by this Court, but found that it is of no impact in its decision, since the decision of the respondent provides that such decision would substitute all acts signed between KEK and the beneficiary. This Court finds that the respondent has fulfilled its obligations to the claimant, since it acted pursuant to the decision, which was not objected by the claimant. Article 11.1, item (b) of the

Essential Labour Law of Kosovo provides that the working contract may be terminated by a written agreement between the employee and employer”.

Applicant’s allegation

21. The Applicant alleges that the Judgment of the Supreme Court of Kosovo “violates his right guaranteed by the Constitution namely, Article 51 [Health and Social Protection], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights]”
22. In addition the Applicant requests from the Court that “since his medical condition has worsened, the respondent, KEK, continues the temporary compensation of the payment, in the amount of 105 Euros per month, continuing from the date of unilateral termination of the payment on 01.09.2008 until the fulfillment of the legal conditions for retirement of the claimant, all this with legal agreement from the date of the submission of the claim until the complete and final payment, as well as procedural expenses”.

Assessment of the admissibility

23. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.

24. 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.

25. The Court also takes into account Rule 36 (1) c) and (2) b) of the Rules of Procedure, which foresees:

(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.

26. In this respect, the Court notes that the Applicant has not substantiate a claim on constitutional grounds and has not provided evidence proving that her fundamental rights and freedoms have been violated by the regular courts.
27. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
28. The Court notes that the Supreme Court sufficiently reasoned its Judgment and thus the Court cannot conclude that the relevant proceedings were in any way

unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

29. The Court recalls that in other cases (v. g. KI40/09) it was adjudicated regarding the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that this current Referral KI76/14 differs from the afore-mentioned cases (v. g. KI40/09). In fact, in these cases, KEK and former employees signed an agreement on temporary compensation until the establishment of the Kosovo Invalidity Pension Fund, thus with a reference to a uncertain date; while, in the current case KI76/14, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date.
30. The Court considers that the Applicant did not clarify why and how his right to property as guaranteed by Article 46 of the Constitution has been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
31. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. 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).
32. Therefore, pursuant to Rule 36. (1) c) of the Rules of Procedure, the Referral is manifestly ill-founded and thus it is inadmissible.


FOR THESE REASONS

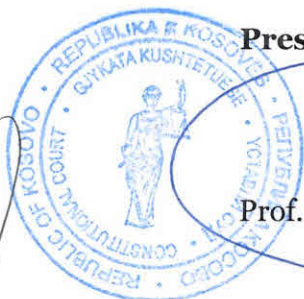
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 23 September 2014, unanimously

DECIDES

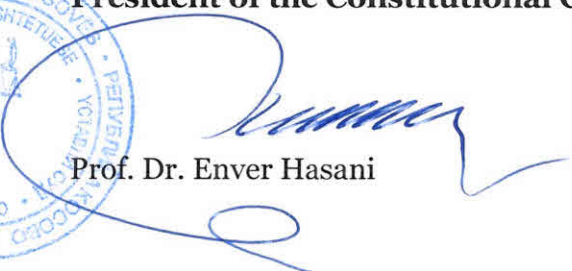
- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani