



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

Prishtina, 7 October 2014
Ref. no.: RK 711/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI84/14

Applicant

Arlind Kaçaniku

**Constitutional review of Decision, Rev. No. 18/2014 of the
Supreme Court, of 3 February 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 Applicant is Mr. Arlind Kaçaniku with residence in Prizren, represented by Mr. Ymer Koro, lawyer from Prizren.

Challenged decision

2. The challenged decision is Decision, Rev. No. 18/2014 of the Supreme Court date 3 February 2014, which was served on the Applicant on 21 March 2014.

Subject matter

3. The subject matter is the constitutional review of Decision, Rev. No. 18/2014 of the Supreme Court dated 3 February 2014, whereby the Applicant's revision against Decision of the Court of Appeals (Ac. No. 373/2013, of 11 September 2013) was rejected as ungrounded. The Applicant alleges that the Judgment of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (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

5. On 12 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 June 2014, the President of the Court by Decision, GJR. KI84/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court by Decision, KSH. KI84/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 17 June 2014, the Constitutional Court notified the Applicant of the registration of Referral. On the same date, the Court sent a copy of the Referral to the Court of Appeal.
8. On 16 September 2014, 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

9. Starting from 25 September 2000, the Applicant was employed for an indefinite period of time with Microfinance Institution "FINCA-KOSOVË" in Prizren (hereinafter: the Employer).

10. On 25 June 2010, based on the warning issued by Disciplinary Committee, the Employer rendered a decision on termination of the Applicant's employment relationship, effective as of 30 June 2010.
11. On 26 August 2010, the Applicant filed a claim with the Municipal Court in Prizren against the Employer's decision on termination of the employment relationship.
12. On 22 October 2012, the Municipal Court in Prizren, by Decision, C. no. 598/2010, rejected the Applicant's claim as out of time.
13. The Municipal Court based on the case files and by referring to the provisions of the applicable law, in its Decision held that:

"Based on evidence presented in the case files, it has been determined that on 18.06.2010 the respondent imposed a warning to the claimant (whereby it is provided that the effective date of termination of employment relationship is 30.06.2010, and the latter was served on the claimant on 25.06.2010, which is seen in the PTK receipt of acknowledgement), whereas the decision on termination of the employment contract was rendered on 30.06.2010 (a date which was mentioned also by the claimant in the claim), the notification which was served on the Applicant one day later by mail (this fact was confirmed by the post receipt of acknowledgement). The Applicant filed a claim on 26.08.2010. From the case files, it can be seen clearly that since the effective decision on termination of the employment relationship have elapsed 56 days. Thus, the claim was filed with the Court after the expiration of the legal deadline of 45 days [...]"

14. As a result of the appeal against the Decision of the Municipal Court in Prizren, the Court of Appeals of Kosovo, by Decision, AC. no. 373/2013 rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Prizren, C. no. 598/2010, of 22 October 2010.
15. Against the Decision of the Court of Appeals, the Applicant filed a revision with the Supreme Court of Kosovo, with allegation of substantial violation of the Law on Contested Procedure and erroneous application of the substantive law.
16. On 3 February 2014, the Supreme Court by Decision Rev. No. 18/2014 rejected the Applicant's revision as ungrounded.
17. As regards to the allegations raised by the Applicant, the Supreme Court held that:

"Under Article 83 of the Law on Basic Rights from Employment Relationship, it is provided that an unsatisfied employee with the final decision of the competent authority in the organization, or if the authority does not render a decision within 30 days from the date of filing the request, i.e. objection, he has the right to seek protection of his rights before the competent court within a time limit of 15 days. The claimant, pursuant to the Law on Associated Labor and the Law on Basic Rights from Employment Relationship, was able to claim the protection of his rights

deriving from employment relationships. These laws were in force, because by Regulation no. 1999/24 (Article 1) of the UN Special Representative of the Secretary General, are defined laws that are in force in Kosovo. Section I, item (b) defines the laws that were in force in Kosovo until 22.03.1989. The applicable law until 1999, among other laws, was also the Law on Associated Labor and the Law on Basic Rights from Employment Relationship, which provide the time limit on protection of the rights of employees deriving from employment relationship, so the allegation stated in the revision that the laws, which were applied by the lower instance courts do not contain any provision regarding the time limit of the claim, are considered by this court as ungrounded”.

[...]

“According to the assessment of the Supreme Court, the lower instance courts have correctly applied the provision of Article 83 of LBREER [Law on Basic Rights from Employment Relationship], because this deadline is preclusive and after expiration of this deadline, the employee loses the right to judicial protection, therefore the claim filed after this deadline, must be rejected as out of time [...]”.

Applicant's allegations

18. The Applicant addresses the Court with the following reasoning:

[...]

In this case the regular courts rejected the Applicant's claim as out of time, based on the Law on Basic Rights from Employment Relationship of former SFRY, promulgated in the Official Gazette no. 60/1989 on 08.10.1989, which entered in to force 8 days after its promulgation, namely on **14.10.1989**. This constitutes violation of Article 1.1 of UNMIK Regulation 1999/24. It must be stressed that Article 1.2 of this Regulation provides a possibility of application of another law, even after this date which is not discriminatory and if a subject matter or situation **is not covered by the laws set out in section 1.1 of the present regulation**. But in this case such a situation as described in Article 1.2 of this Regulation did not exist, because this matter (time limit of claim), was covered by the **Law on Associated Labor** (promulgated in Official Gazette of former SFRY 53/1976). In fact, the Supreme Court in its Decision stated that this Law according to Regulation 1999/24, is applicable law, but this Court has not specified any Article of this Law [...]”.

19. The Applicant concludes by alleging that “ [...] the regular courts did not hold fair trial by applying non-applicable law in Kosovo and consequently the applicant remained without judicial protection, and this constitutes violation of Articles 31 and 54 of the Constitution of the Republic of Kosovo.”

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

“[...] that the Constitutional Court states whether a law after 22.03.1999 [1989], can be applied if other positive laws in Kosovo before this date in the

field of employment relationship already govern a legal matter (time limit of claim)”.

Assessment of the admissibility of Referral

21. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine beforehand, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which provides:

“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”.

23. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

(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:

[...], or

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

[...], or

(d) when the Applicant does not sufficiently substantiate his claim”.

24. As it was mentioned above, the Applicant alleges that “[...] the regular courts did not hold a fair trial by applying non-applicable law in Kosovo and consequently the Applicant remained without judicial protection, which constitutes violation of Articles 31 and 54 of the Constitution of the Republic of Kosovo,” and he requests from the Court “[...] to state whether a Law after 22.03.1999 [1989], can be applied if other positive laws in Kosovo before this date in the field of employment of relationship already govern a legal matter (time limit of claim)”.

25. In this case, the Court notes that the matter referred by the Applicant is the matter of legality, not of the constitutionality.

26. As regards to this, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

27. The Court also reiterates that the Constitutional Court cannot replace the role of the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see case, *Garcia Ruiz v.*

Spain, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

28. Regarding the Applicant's allegation, cited in paragraph 24, the Court notes that the reasoning provided in the Decision of the Supreme Court is clear and the reasoning provided by the Supreme Court covers the allegations raised by the Applicant regarding the implementation of the legislation in force with respect to the time limit of the claim. After reviewing the entire proceedings, the Court also found that the proceedings before the Court of Appeals and the Municipal Court in Prizren, have not been unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
29. Accordingly, the Court considers that the Referral is inadmissible as manifestly ill-founded, because the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, invoked by the Applicant and he has not sufficiently substantiated his claim.

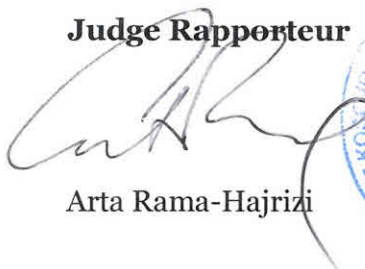
FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and d) and 56 (2) of the Rules of Procedure, on 16 September 2014, unanimously:

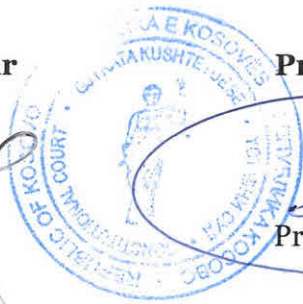
DECIDES

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

Judge Rapporteur



Arta Rama-Hajrizi



President of the Constitutional Court



Prof. Dr. Enver Hasani