



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

Prishtina, 10 December 2014
Ref. No.:RK738/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI85/14

Applicant

Gafurr Osmani

**Constitutional Review of the Judgment Rev. no. 269/2013 of the Supreme
Court 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Gafurr Osmani (hereinafter: the Applicant), residing in Prizren.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 269/2013, of 9 December 2013, which was served on him on 22 January 2014.

Subject matter

3. The Applicant alleges that the above - mentioned judgment violated his right to a fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) because: *“in my case the regular courts of the three instances had a constitutional and legal obligation to apply the law on labor which was in force before the war in Kosovo”*.

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).

Proceedings before the Constitutional Court

5. On 14 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 No. GJR. KI85/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President of the Court, by Decision, No. KSH. KI85/14, appointed the Review Panel consisting of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. Also on 10 June 2014, the Court notified the Applicant about the registration of the Referral and sent a copy to the Supreme Court.
8. On 15 September 2014, the President of the Court, by Decision No. GJR. KI85/14 appointed Judge Ivan Čukalović as Judge Rapporteur instead of Judge Robert Carolan.
9. On 16 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court as to the inadmissibility of the Referral.

Summary of facts

10. On 8 November 2011, the Municipal Court in Suha Reka rendered a Judgment (C. no. 321/06) by which the Applicant's claim suit to annul the notice on termination of working relationship was rejected as ungrounded.
11. Against the Municipal Court in Suha Reka judgment, the Applicant submitted an appeal due to substantial violations of contested procedure, erroneous

ascertainment of factual situation, and erroneous application of material provisions.

12. On 19 June 2013 the Kosovo Court of Appeals in Pristina rendered a judgment (CA. no. 2910/2012) whereby the Applicant's appeal was rejected as ungrounded and the judgment of the Municipal Court in Suha Reka confirmed.
13. The Applicant filed a revision due to a substantial violation of procedural provisions and violation of material provisions. The Applicant emphasized, *inter alia* that "*the first and the second instance rulings are in contradiction to the material provisions, to the detriment of the claimant, while erroneous application of material law has render the ruling as unlawful, and such conclusion is based on the fact that the claimant had permanent working relationship, and according to such contract, the Law on Working Relationship of 1989, and the Labor Law 1977, and relevant amendments, which laws, pursuant to UNMIK Regulation no. 1999/24 until the entry into force of the Labor Law of the Republic of Kosovo no 03/L-2012 in December 2010, were applicable, and therefore the Court was bound to ground its legal protection, and not administrative regulations and instructions which were in contradiction with the provisions of such laws.*"
14. On 9 December 2013, the Supreme Court issued the challenged judgment (Rev. no. 269/2013) and rejected the Applicant's revision as ungrounded.
15. In the reasoning of that judgment, it was stated, *inter alia*, "... *the challenged judgment was rendered by a fair application of contested procedure provisions and material law, and it contains sufficient reasoning on relevant facts, which are accepted by this Court. This is due to the reason that according Section 1 of the Regulation 1999/24, applicable legislation in Kosovo is provided upon Section 1 item a) provides that Regulations promulgated by the Special Representative of the UN Secretary General, and all additional instruments issued in compliance with such regulations, shall be applicable in Kosovo*".
16. The Supreme Court also mentioned that, "*according to Article 6 of the Regulation no 2000/11 of 3 March 2000 establishing an Administrative Department for Education and Science, that Regulation would substitute any provision in applicable law inconsistent with it, while the Administrative Instruction of the Department of Education and Science, DES (I) 4/2000 was issued in compliance with that Regulation*".

Applicant's allegations

17. The Applicant alleges that his right to a fair trial guaranteed by Article 31 of the Constitution has been violated. He alleges in particular that "*all three judicial instances were bound legally and constitutionally, to apply legal provisions of the Labor Law which was in force before the war in Kosovo*".
18. Furthermore, the Applicant alleges that: *I request annulment of decisions of the regular courts because of violations of the right to a fair and impartial trial as stipulated by Article 31 of the Constitution. The Applicant has requested*

judicial protection respectively fulfillment of his rights in accordance with laws that were in force at the time when public organs violated his rights by terminating his work contract. The courts after more than 10 years have decided to the detriment of the Applicant by relying on the provisions of current laws and not on the laws that were applicable when the violation occurred”.

Assessment of admissibility

19. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. In this respect the Court refers to Article 113.7 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”.

21. 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."

22. The Court also takes into account Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure which provide:

(1) The Court may only deal with Referrals if:

(...)

(c) the Referral is not manifestly ill-founded.

36 (2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

(a) the Referral is not prima facie justified, or

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

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

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

23. In the concrete case, the Court notes that the Applicant has filed complaints and appeals before all instances of regular judiciary and thus exhausted all legal remedies and is an authorized person to submit a referral within the meaning of Article 113.7 of the Constitution.

24. In relation to the Applicant's allegations on the violation of Article 31 of the Constitution [Right to a Fair and Impartial Trial], the Court notes that the Applicant has not clarified how and why this specific constitutional right was violated by the challenged decision, which allegedly adjudicated *"by applying provisions of current laws and not the laws that were applicable at the time when the alleged violation occurred"*.
25. The Court notes that the right to fair and impartial trial encompasses a number of elements, and represents key components in protecting basic individual rights from violations potentially committed by courts or public authorities by their rulings.
26. In this regard, the Court refers to Article 31 [Right to a Fair and Impartial Trial] of the Constitution, which clearly provides that:
 1. *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers."*
27. Article 6 of the European Convention on Human Rights (ECHR) also provides that:

"In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
28. In this context, the Applicant does not accurately clarify how and why the allegation "applying provisions of current laws" substantiates a constitutional violation of his fundamental right to a fair and impartial trial.
29. Moreover, the above extensive quotation of the decision of the Supreme Court shows that the challenged decision provided extensive and comprehensive reasoning of the facts of the case and of its findings.
30. Furthermore, the dissatisfaction with the decision or merely mentioning articles or provisions of the Constitution is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging violations of the constitution, the Applicant must provide a compelling and well-reasoned argument in order the Referral to be grounded (See case KI186/13, Applicant *Kosovo Energy Corporation*, Resolution on Inadmissibility of 10 February 2014).
31. In sum, the Applicant does not substantiate and prove that the regular courts, allegedly adjudicating "based on the provisions of current laws", violated his constitutional rights.
32. In fact, the Court the Court does not review decisions of the regular courts on matter of legality, nor does it review the accuracy of matter of facts, unless there is clear and convincing evidence that such decisions are rendered in a manifestly unfair and arbitrary manner.

33. Moreover, it is not the duty of the Court to decide whether the regular courts have appropriately reviewed arguments of applicants in resolving legal matters. This remains solely the jurisdiction of the regular courts. It is the duty of the regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, paragraph. 28, European Court for Human Rights [ECtHR] 1999-1).
34. The duty of the Constitutional Court is to assess whether, during the proceedings of the regular courts, the courts have violated any fundamental rights as guaranteed by the Constitution.
35. As a result, the Court finds that the Applicant's Referral does not meet the admissibility requirements, since the Applicant has failed to substantiate his allegation and submit supporting evidence on the alleged constitutional violation by the Challenged Decisions.
36. Therefore, pursuant to Rule 36 (2) b) and d) of the Rules of Procedure, the Referral of the Applicant must be declared as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule and 36 (2) b) and d) of the Rules of Procedure, on 16 September 2014, unanimously

DECIDES

- I. TO DECLARE the Referral 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. This Decision is effective immediately.

Judge Rapporteur



Ivan Čukalović



President of the Constitutional Court



Prof. Dr. Enver Hasani