



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

Pristina, 17 November 2014
Ref. no.: RK729/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI86/14

Applicant

Advije Nimani

Constitutional review of the Judgment Rev. no. 32/2014, of the Supreme Court of Kosovo, of 13 March 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 Referral was submitted by Ms. Advije Nimani (hereinafter: the Applicant), represented by Mr. Safet Voca, lawyer from Mitrovica.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment Rev. no. 32/2014, of the Supreme Court of Kosovo, of 13 March 2014.

Subject matter

3. The subject matter is the constitutional review of the decision of the Supreme Court of Kosovo, which according to the Applicant “... *is unlawful and in contradiction to the provisions of Article 31 paragraph 1 of the Constitution of the Republic of Kosovo*”.

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 14 May 2014, the Applicant submitted a 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. KI86/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI86/14, appointed Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 19 June 2014, the Applicant was notified on registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court of Kosovo, the Ministry of Public Services (hereinafter: MPS) and the Ministry of the Internal Affairs (hereinafter: MIA).
8. On 15 September 2014, the President of the Court by Decision No. KSH. KI86/14, replaced Judge Robert Carolan with Judge Kadri Kryeziu as a member of the Review Panel.
9. On 17 September 2014, 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. The Applicant has established employment relationship with the MPS for a fix period of time, starting from 1 September 2003 until 28 February 2004, in the job position of the Data Officer in the Vehicle Registration Department in Mitrovica. By Memorandum of Understanding no. 840 of 21 March 2006,

signed between MPS and MIA the responsibilities for vehicle registration issues were transferred.

11. On 31 March 2004, the MPS had rendered a decision on termination of the employment relationship with the Applicant due to a serious violation of discipline, as provided by Article 3.2 of UNMIK Regulation no. 2001/36 on Kosovo Civil Service.
12. The abovementioned decision was upheld by Decision (Ref. KA-MSHP 0807/2004 of 26 October 2004) of the MPS Appellate Committee, respectively, by Decision (no. 1511/2006, of 25 July 2006) of the Independent Oversight Board of Kosovo.
13. On 15 May 2007, the Municipal Court in Mitrovica, by Judgment C. no. 638/2006 approved the Applicant's statement of claim, annulled the abovementioned decisions of the MPS and of the Independent Oversight Board of Kosovo and ordered MIA to reinstate the Applicant to her previous working place, with all rights deriving from the employment relationship.
14. On 18 October 2013, the Court of Appeal of Kosovo, by Judgment Ac. no. 785/2012 rejected as ungrounded the appeals of the MPS and of the MIA, and upheld the abovementioned Judgment of the Municipal Court in Mitrovica.
15. On 13 March 2014, the Supreme Court of Kosovo, by Judgment Rev. no. 32/2014 approved the revision, filed by the MPS and the MIA and modified the aforementioned judgments of the Municipal Court in Mitrovica, respectively the Court of Appeal of Kosovo and rejected the Applicant's statement of claim as ungrounded.
16. In the aforementioned Judgment, the Supreme Court of Kosovo, reasoned among the other:

Setting from such determined factual situation, the Supreme Court of Kosovo found that the lower instance courts have correctly and completely determined the factual situation regarding the decisive facts for fair adjudication of this legal matter, however, based on such situation, according to the assessment of this Court, the substantive law was erroneously applied when they found that the claimant's statement of claim is grounded.

This court assessed that both judgments of the lower instance courts, as a ground for approval of the claimant's statement of claim considered the fact that the claimant, pursuant to the final criminal judgment P. no. 518/2005 of 10.04.2006, was acquitted of charges, which offence has to do with this case. Pursuant to Article 14 of LCP, in the contested procedure, the court, in terms of existence of criminal offence and criminal liability of the perpetrator, is bound by the final judgment of the criminal court, by which the defendant was found guilty, whereas is not bound by the judgment, by which was acquitted of criminal liability, regardless of the reasons of acquittal. From the case file it was determined that there is abuse of the working duties in the actions of the claimant which are provided as

violations of the Code of Conduct Rules of KCS, pursuant to Chapter II, Article 2.1, item c, q and appendix Code of Conduct and SHT, items 4, 6, 10 of the Regulation 2001/36 and Administrative Direction 2003/2, Article 30.1, items a, c, provided pursuant to procedures of the personnel management, chapter IX, disciplinary procedures, honesty and courtesy, item 4.2 under 1, 2, item 5, 4.1, 5.4.9, exceeding the limits of authority and abuse of official duty.

The claimant, as data registration officer should have acted in conformity with the document of 04.11.2003, presented by the Central Vehicle Registration Office in Prishtina, by which they had been informed regarding vehicles which are not to be registered since they do not possess valid documentation. Whereas, the latter, without carrying out with DUD verification – false customs, has registered the vehicle which was prohibited from being registered, which in fact was determined based on the check up dated 27.11.2003.

The lower instance courts have erroneously applied the substantive law when they found that the claimant's statement of claim is grounded, since, pursuant to Article 30.1, items a, b and t, of the Administrative Directive 2003/2 on application of UNMIK Regulation No. 2001/36 on Civil Service of the Contract, the violations of the Code of Conduct have been provided, which as a result have provided their disciplinary penalty.

Applicant's allegations

17. The Applicant alleges that the Supreme Court “decided upon the revision and when decided upon this extraordinary legal remedy, it was not entitled to reject the statement of claim of the claimant but only to quash the judgment of the first instance court and the second instance court, and to remand the matter for retrial and reconsideration”.
18. The Applicant alleges that the Supreme Court “when decided referred to the document of 14.11.2003 which does not exist in the case file and has never been processed as evidence before the first and second instance courts”.
19. The Applicant requests from the Court “to annul Judgment of the Supreme Court of Kosovo, Rev. no. 32/2014 and declare the same unlawful and in contradiction to the provisions of Article 31, paragraph 1 of the Constitution of the Republic of Kosovo”.

Admissibility of the Referral

20. The Court notes that in order to be able to adjudicate the Applicant's referral, it has 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.
21. 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”.

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

The Court may only deal with Referrals if:

(...)

c) the Referral is not manifestly ill-founded.

23. As regards to the Applicant's allegations, the Court notes that the Supreme Court of Kosovo has provided a reasoned decision, where are clearly stated the obligations of the Applicant as an Employee, in relation to her Employer and the way how the material law should be applied by the lower instance courts in the present case.
24. The Constitutional Court recalls that it is not a fact-finding Court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts, whereas the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a fourth instance court (See case, *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, see also case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
25. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
26. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
27. In these circumstances, the Applicant has not substantiated her allegation of violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by her do not show in any way that the regular courts had denied her the rights guaranteed by the Constitution.
28. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

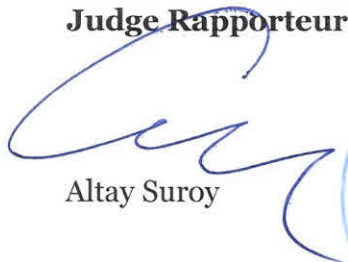
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 17 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



Altay Suroy

President of the Constitutional Court



Prof. Dr. Enver Hasani