



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

Pristina, 05 septembar 2012
Ref. No.: RK294/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI89/10

Applicant

Mehdi Sopjani

**Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev nr.
68/2008, dated 14 September 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy – President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

The Applicant

1. The Applicant is Mehdi Sopjani of Pristina and he is unrepresented.

Subject Matter

2. The subject matter of the Referral concerns a dispute over the termination of the employment of the Applicant with the Kosovo Energy Corporation (KEK). The Supreme Court of Kosovo ultimately found against the Applicant in its Judgment of 14 September 2010.

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

4. On 27 September 2010 the Applicant filed a Referral with the Constitutional Court.
5. By letter dated the 9 November 2010 the Court notified the Supreme Court of the making of the Referral.
6. On 14 December 2010 the President of the Constitutional Court appointed Judge Iliriana Islami as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.
7. On 2 July 2012 the President replaced the Judge Iliriani Islami, whose mandate as a Judge of the Constitutional Court had expired, with Judge Altay Suroy as the Judge Rapporteur.
8. On 10 July 2012, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts of the case as evidenced by the documents filed by the Applicant

9. On 9 March 2002 the Applicant was allegedly found with stolen copper wire in his private vehicle while he was in the employment of KEK. Disciplinary proceedings followed which led initially to his suspension and ultimately to a decision, dated 4 June 2002, to dismiss him from KEK. The Applicant appealed this decision to the Executive Board of KEK which by decision, dated 7 August 2002, found no elements to annul the decision to dismiss him.
10. Following his dismissal legal proceedings were instituted by the Applicant. These led ultimately led to a considerable number of court Decisions. The ones which form the basis of the Referral of the Applicant are as follows; firstly, of the Municipal Court of Pristina, C1. Nr. 179/2002, dated 10 March 2004 which found in the Applicant's favour; secondly, this was appealed by KEK to the District Court in Pristina which by Decision, AC.nr. 484/2004 also found in favour of the Applicant and finally the Decision of the Supreme Court of Kosovo, Rev. nr. 38/2008, dated 9 July 2010.
11. In the Supreme Court decision the claims of the Applicant were dismissed and Judgment was given in favour of KEK. The Supreme Court stated that the stance of the lower Courts presented the wrong implementation of the substantive law.

12. The employer had always maintained that it was justified in terminating the employment of the Applicant because he had been found to have stolen property of KEK. They relied on Article 11.3 (b) of UNMIK Regulation No. 2001/27 on Essential Labour Law in Kosovo which in its relevant part states as follows:

“Section 11

Termination of a Labour Contract

11.1 A labour contract shall terminate:

- (a) upon the death of the employee;*
- (b) by a written agreement between the employee and employer;*
- (c) on the grounds of serious misconduct by the employee;*
- (d) on the grounds of unsatisfactory performance by the employee;*
- (e) following the expiration of the term of employment; and*
- (f) by operation of law.*

11.2 A labour contract shall be terminated by the employer on the grounds of serious misconduct or unsatisfactory performance by the employee.

11.3 Serious misconduct shall include the following:

- (a) unjustified refusal to perform the obligations set out in the labour contract;*
- (b) theft, destruction, damage or unauthorized use of the employer’s assets;*
- (c) disclosure of business secrets;*
- (d) consumption of drugs or alcohol at work; and*
- (e) behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue.”*

13. The Supreme Court also pointed out that the internal Regulations of KEK foresaw theft as a serious case of bad behaviour of employee. That Court determined that the decision of KEK to terminate the employment relationship was right and legal in light of the abovementioned legal provisions.

Allegations of the Applicant

14. The Applicant does not specify in his Application what particular provisions of the Constitution of Kosovo he alleges to have been violated. The Applicant in a general manner complains that the Supreme Court rejected the Applicant’s claim on appeal from his employer, KEK, and provided only superficial and unconvincing reasons. He therefore considered that the Constitutional Court should decide in his favour because of a violation of applicable law.

Assessment of the admissibility of the referral

15. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
16. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

“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.”

17. The Constitutional Court notes that it is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (*see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011 – issued by the Court on 5 April 2012*).
18. From facts submitted with the Referral, the Applicant has used all legal remedies available, and that the regular courts took into account all the evidence presented. Reasons were given for the Decisions that were taken. Indeed, the Supreme Court in its Judgment of 9 July 2010 gave its clear reasons for not accepting the claim of the Applicant and cited the applicable law and it appears to have applied that law in a manner that favoured the employer instead of the Applicant. The Constitutional Court can find no fault with the reasoning of the Supreme Court on that account.
19. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.
20. Moreover, the Referral does not indicate that the Courts acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (*see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991*).
21. The fact that the applicant is dissatisfied 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 mutatis mutandis Judgment ECHR Appl. No. 5503/02, Meztur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005*).
22. In these circumstances, the Applicant has not substantiated his claim because the facts presented by him do not show in any way that the Supreme Court had denied him rights guaranteed by the Constitution.

FOR THESE REASONS

The Court, following deliberations on 10 July 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur

Altay Suroy

President of the Constitutional Court

Prof. Dr. Enver Hasani

