



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

Prishtina, on.8 December 2011.
Ref. No.:RK166/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 91/11

Applicant

Xhevrije Haliti

**Request for Constitutional review of the Judgment of the Supreme Court of
Kosovo Rev. No. 588/2008 of 14 April 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasni-president
Kadri Kryeziu, Deputy-President
Robert Carolan, judge
Altay Suroy, judge
Almiro Rodrigues, judge
Snezhana Botusharova, judge
Ivan Čukalović, judge
Gjyljeta Mushkolaj, judge and
Iliriana Islami, judge

Applicant

1. The applicant is Mrs. Xhevrije Haliti from Ferizaj residing in "Astrit Bytyqi" Street no. 65, represented by the authorized lawyer Mr. Halil Ilazi from Ferizaj.

Challenged decision

2. The challenged decision of the public authority alleging the violation of the rights guaranteed by the Constitution of Kosovo is the Judgment of the Supreme Court, Rev. no. 588/2008 dated 14 April 2011 which applicant of the Referral claims to have received by 2 June 2011.

Subject matter

3. The subject matter of the referral submitted with the Constitutional Court of the Republic of Kosovo on 4 July 2011, is the assessment of the Constitutionality of the Judgment of Supreme Court of Kosovo, Rev. no. 388/2008 of 14 April 2011, which had approved the Revision of the respondent “Raiffeisen Bank” where the applicant worked since 2002 and than on October 2003 her working relation was terminated.

Alleged violations of the rights guaranteed by the Constitution

4. The applicant alleges that with the judgment of the Supreme Court are violated the rights guaranteed by the Constitution of the Republic of Kosovo as follows: Article 49 (the right to work and profession), Article 31 (the right to fair and impartial trial), Article 54 (the right to judicial protection of the rights) and Article 6 of European Convention of Human Rights (hereinafter: ECHR).

Legal basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law no. 03/L-121 for the Constitutional Court of the Republic of Kosovo dated 16 December 2009 entered into force on 15 January 2010 (hereinafter referred to as: Law) and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: Rules).

The complaint of the applicant

6. The applicant claims that the Supreme Court with the Judgment Rev. no. 588/2008 dated 14 April 2011, denied her the right to work, which right recognized otherwise the Municipal Court of Ferizaj with the Judgment C. no. 470/03.04.2007 and the District Court of Prishtina with Judgment AC. no. 497/07 dated 14 October 2008.

Proceeding before the Court

7. On 4 July 2011 Constitutional Court received the referral of Mrs. Xhevrije Haliti presented before the Court by the authorized lawyer Mr. Halil Ilazi and registered under No. KI 91/11.
8. On 17 August 2011 by the decision GJR 91/11 President of the Court appointed Judge Robert Carolan as Judge Rapporteur.
9. On the same day President of the Court appointed the Review Panel composed by Altay Suroy (Presiding) and judges Ivan Čukalović and Dr. Gjyljeta Mushkolaj.
10. Constitutional Court had informed the Supreme Court and the representative of the Applicant on 5 August 2011, for registration of the case, but had not received any comment from any party, within the legal deadline.
11. The Constitutional Court deliberated on the Referral on 30 November 2011 and review panel proposed to the full court for inadmissibility of the referral.

Summary of the facts

12. On October 1 2003, Mrs. Xhevrije has received written notice from “Raiffeisen Bank” that from October 1, 2003, based on Article 1 of her labor contract, that she will be “.....terminated from her employment at the bank, while the termination of employment is due to reorganization and excessive number of employees in the branch office of this bank in Ferizaj.”
13. On 3 April 2007 the Municipal Court of Ferizaj issued Judgment Ac. no. 470/03, which approved the claim of the plaintiff Ms. Xhevrije Haliti, and annulled the decision on the unilateral termination of her employment contract, and at the same time obliged the respondent “Raiffeisen Bank” to compensate to plaintiff the cost of proceedings in the amount of 708.00 €.
14. On 14 October 2007 the District Court of Prishtina, acting on the appeal of “Raiffeisen bank” rendered the Judgment Ac. no. 297/2007, which rejected the appeal of the respondent “Respondent Bank” and confirmed the Judgment of the Municipal Court of Ferizaj C. no. 470/03 of 3 April 2007.
15. According to the claim of the lawyer Mr. Halil Ilazi, as representative of Ms. Xhevrije Haliti, upon the Judgment of the District Court in Prishtina Ac. Nr. 497/2007, the “Raiffeisen Bank” had returned Mrs. Xhevrije Haliti to work and she continues to work in this institution as of 1 November 2011.
16. On 14 April 2011 the Supreme Court decided upon Revision of the respondent “Raiffeisen Bank” and rendered the Judgment Rev. no. 588/2008, which approved the Revision of the respondent and changed the Judgment of the District Court of Prishtina AC. No. 497/2007, dated 14 October 2008 and Judgment of Municipal Court in Ferizaj C. no. 470/2003 dated 3 April 2007, therefore REFUSED the claim suit of the plaintiff Xhevrije Haliti to revoke the termination of her employment contract and return her to the workplace at “Raiffeisen Bank” –branch in Ferizaj. Supreme Court
17. Supreme Court in the reasoning part of the Judgment Rev. no. 588/2008 concluded that the lower instances in this case have decided correctly evaluated the factual situation but have applied wrongfully the material law. Hence, the Supreme Court concluded that the legal qualification of the lower instance Courts that the termination of labour Contract for the applicant was done in breach of Article 11.1 of Regulation 2001/27 of Essential Labour Law in Kosovo is unacceptable, because Article 11.4 (b) of the same law foresees that **repeated violations** are sufficient ground for termination of employment contract which according to the Supreme Court occurred in this case and according to this legal qualification quashed the lower instances decisions.
18. On June 6 2011, 4 days after the receipt of Judgment of the Supreme Court which decided on the Revision presented by “Raiffeisen Bank” on the labor dispute that has to do with it, Mrs. Xhevrije Haliti signed a new employment contract for an indefinite period that was conditioned with the work performance of employee and may be subject to termination under the conditions laid down in Article 8.
19. Finally, despite the fact that she had a new labor contract with the same employer, Mrs. Xhevrije Haliti, through her lawyer Mr. Halil Ilazi on 4 July 2011 filed a referral for assessing the Constitutionality of Judgment of Revision of Supreme Court Rev. no. 588/2008 of 14. April 2011.

Assessment of the admissibility of the referral

20. The Court observes that, to be able to adjudicate the applicant's complaint, it is necessary to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

21. In this connection, 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".

The Court also stipulates:

Rule 36 of the Rules of Procedure of the Constitutional court which provides:

*"(1) The Court may only deal with Referrals if:
c) The Referral is not manifestly ill-founded.*

22. Referring to the supposed violation of the rights guaranteed with the Constitution of the Republic of Kosovo and other international conventions and instruments, the Court emphasizes:

23. In Article 102 [General principles of the Judicial System] item 3 of the Constitution in item 2 also provides that: "Courts shall adjudicate based on the Constitution and the Law".

24. In article 103 **[Organization and the jurisdiction of the Courts]**, of the Constitution item 2 also clearly provides: "Supreme Court is the highest judicial authority".

25. In this regard there are not any facts that the Supreme Court in deciding on the request for revision which is expressly authorized pursuant to Article 212 of the LCP has violated Article 31.2 (the right to fair and impartial trial) article 54 (the juridical protection of rights), or Article 6 of the ECHR (right to fair and impartial trial) for which the applicant has alleged that have been violated.

26. In fact, the applicant apart from expressing the dissatisfaction for Revision issued by the Supreme Court has not argued convincingly why the trial "was not fair and impartial" in which manner it has been treated as unequal or what stage of the procedure was against the Constitution.

27. The fact that the applicant who filed referral with the Constitutional Court, continues to work at "Raiffeisen Bank" and that has a new employment contract, is not essential for legal issues and does not argue possible violations of Constitution in the challenged Judgment, because it happened after the Supreme Court decided on the Revision, and was not part of the evidence presented before that Court. Moreover, the representative of the applicant has noted in the application that the new employment contract between the Applicant and her employer, after the Supreme Court has decided on the revision of the respondent, it is a new fact which does not directly affect in this legal issue, but however according to him is not inconsistent with law.

28. Constitutional Court is not a Court of verifying facts. and in this case the determination of the right and complete factual situation is under the full jurisdiction of the regular courts and the role of the Constitutional Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. It cannot act as a “fourth instance court” (see *mutatis mutandis*, i.a. Akdivar against Turkey, 16 September 1996 , R.J.D. 1996-IV, paragraph 65).
29. The simple fact that the applicants are dissatisfied with the case outcome, cannot serve then as the right to raise an arguable referral for violation of the Article 31 of the Constitution (see *mutatis mutandis* ECHR, Judgment Ap. Nr. 5503/02, Mezőtur-Tiszazugi Tarsulat against Hungary, Judgment of 26 July 2005).
30. In this regard the Constitutional Court should find no evidence that the Supreme Court has not made a “fair and impartial trial” by bringing the decision as to the above revision and does not find that with that decision a violation the rights guaranteed by the Constitution.
31. In this respect the applicant of referral failed to “sufficiently argue his allegation”, therefore I recommend to the Review Panel in accordance with the rule 36.2 (c) and (d) to refuse the referral as manifestly ill-founded

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure, on 30 November 2011, unanimously:

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;
- III. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani

