



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

Prishtina, on 12 May 2016
Ref. no.: RK934/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI93/15

Applicant

Ahmet Tërnav

Constitutional review of Judgment Rev. no. 12/2015, of the Supreme Court, of 4 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Ahmet Tërnav from village Lismir, the Municipality of Fushë Kosovë (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment Rev. no. 12/2015, of the Supreme Court, of 4 February 2015.
3. The Applicant was served with the challenged Judgment on 20 March 2015.

Subject matter

4. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court, which allegedly violated the Applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 19 August 2015, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur, and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 14 September 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 14 September 2015, the Court requested the Basic Court in Prishtina to submit the copy of the letter of the receipt, indicating the date when the Applicant was served with the Judgment Rev. no. 12/2015, of the Supreme Court, of 4 September 2015.
10. On 3 March 2016, the Court received the copy of the letter of the receipt requested from the Basic Court in Prishtina, showing that the abovementioned Judgment of the Supreme Court was served on the Applicant on 20 March 2015.
11. On 14 April 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. The Applicant had an employment relationship as an electrician in the open cast mine, the former Elektroekonomia (hereinafter: the Employer).
13. On 11 August 1993, on the grounds that the Applicant caused damage in the workplace, the Disciplinary Commission of the Employer issued the decision on termination of employment relationship. Against the decision of the Disciplinary Commission, the Applicant filed an appeal with the Appeals Commission.
14. On 8 September 1993, the Appeals Commission rejected the Applicant's complaint as ungrounded and upheld the Decision of the Disciplinary Commission.
15. On 20 March 1996, the Municipal Court in Prishtina (Judgment, K. no. 2137/94), acquitted the Applicant of the charge for the damage caused at his workplace.
16. Based on the case file, in 2003, the Applicant filed a claim with the Municipal Court in Prishtina for reinstatement to his former working place. In this court procedure, in the capacity of a respondent was Kosovo Energy Corporation, the coal mine company "Kosova" (hereinafter: KEK).
17. On 4 July, 2005, the Municipal Court in Prishtina (Judgment, C1. No. 36/03) approved the claim of the Applicant, annulled as unlawful the decisions of two disciplinary authorities of the employer and obligated KEK to reinstate the Applicant to the previous job position.
18. KEK filed the appeal with the District Court in Prishtina against the abovementioned judgment of the Municipal Court, alleging violation of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.
19. On 7 December 2006, the District Court in Prishtina (Judgment Ac. No. 62/2006), rejected as ungrounded the appeal of KEK and upheld the Judgment of the Municipal Court in Prishtina.
20. KEK submitted a revision to the Supreme Court against the Judgment of the District Court in Prishtina, alleging fundamental violation of the Law on Contested Procedure and erroneous application of the substantive law.
21. On 15 May 2008, the Supreme Court (Decision Rev. no. 61/2007) approved the KEK revision, quashed the Judgment of the District Court in Prishtina and of the Municipal Court and remanded the case for retrial to the first instance.
22. The Supreme Court reasoned its decision on remanding the case for retrial, concluding that the courts of lower instance courts due to erroneous application of the substantive law did not correctly determine the factual situation. In this regard, the Court found that the lower instance courts did not take into account KEK allegations on application of the substantive law

namely, KEK Regulation regarding the Application on employment relationship. This Regulation recognized the employment relationship to former workers of Elektroekonomia whose employment relationship was terminated on any grounds. Under this Regulation the employees were invited to show up at workplace by 1 July 2000 the latest. According to the Supreme Court, the Applicant did not use this right, by not appearing at his workplace within the deadline.

23. On 15 December 2011, in the repeated proceedings, the Municipal Court in Prishtina (C1. No. 268/08) rejected as ungrounded the claim of the Applicant, by which he requested the annulment of the Employer's decisions of 1993 and compensation for unpaid salaries for the period from 10 March 1993 until 11 March 2009.
24. The Municipal Court in Prishtina found that on 6 October 2000, KEK was registered in the provisional business register with UNMIK. This Court, further concluded that: *"the fact that the Kosovo Energy Corporation (KEK) which was established and registered after the end of the war in Kosovo, in the same assets possessed by former Elektroekonomia of Kosovo, with HQ in Prishtina and then in the former Elektroekonomia of Serbia, does not mean that the latter is the successor to the Public Company "Elektroekonomia of Serbia"."*
25. Thus, the Municipal Court in Prishtina found that KEK is not responsible for the damage caused to the claimant and accordingly, it has no obligation to compensate the lost personal income, specified in his claim.
26. The Applicant filed an appeal against the Judgment of the Municipal Court, alleging violation of procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.
27. On 8 July 2014, the Court of Appeal (Judgment, CA. no. 4228/12) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court in Prishtina.
28. The Court of Appeal in its Judgment confirmed the stance of the Municipal Court in Prishtina, by concluding that the Applicant *"[...] did not prove until the end of the main hearing of this matter, nor in the procedure upon the appeal that the respondent [KEK] has no real passive legitimacy in this legal matter [...]."*
29. Against the Judgment of the Court of Appeal, the Applicant submitted a revision to the Supreme Court, alleging violation of the contested procedure provisions and erroneous application of the substantive law. In addition, the Applicant alleged that KEK was a successor of former Elektroekonomia and, because of this, is obliged to pay him the compensation for the termination of his employment relationship.
30. On 4 February 2015, the Supreme Court (Rev. no. 12/2015) rejected the Applicant's revision as ungrounded.

31. In its judgment, the Supreme Court held that the Court of Appeal correctly assessed that KEK cannot be a party to the proceedings because it does not have passive legitimacy.
32. Therefore, the Supreme Court found as inadmissible the Applicant's allegations that KEK, as a successor of the former Elektroekonomia, inherited the obligations in relation to former employees of the former Elektroekonomia. Finally, the Court found that KEK is not a successor of the former Elektroekonomia, and, consequently, *"it cannot take over any obligation arising from the employment relationship of the employee of the former Publicly Owned Enterprise [...]"*.

Applicant's allegations

33. The Applicant alleges in his Referral that the regular courts violated his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR. However, the Applicant did not explain how and why his right to fair and impartial trial was violated.
34. In addition, the Applicant addresses the Court with the following request: *"to assess the legal matter that KEK has passive legitimacy and that it should be liable for the obligations of the legal entity – Elektroekonomia of Kosovo later changed its name to Elektroekonomia of Serbia, and after the war in Kosovo Energy Corporation."*
35. Finally, the Applicant requests the Court to annul the judgments of the Supreme Court (Rev. 12/2015, of 4 February 2015), of the Court of Appeal (Ca. no. 4228/2012, of 8 July 2014) and of the Municipal Court in Prishtina (C. no. 268/2008, of 15 December 2011) and the case be remanded for retrial.

Admissibility of the Referral

36. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and Rules of Procedure.
37. In this regard, Article 113 paragraph 7 of the Constitution, states:

"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."
38. The Court notes that the Applicant is an authorized party under the Constitution, he challenges an act of a public authority, namely the Judgment of the Supreme Court, that he has exhausted necessary legal remedies and has submitted his referral within a period of 4 (four) months after being served with the judgment.
39. The Court also refers to Article 48 of the Law, which states:

“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”.

40. In addition, the Court should assess whether the Applicant fulfilled the requirements under Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

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

[...]

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

41. The Court recalls that the Applicant alleges that the regular courts have violated his right to fair and impartial trial.
42. In this case, the Court notes that the Applicant merely states that there has been a violation of constitutional right to fair and impartial trial, without explaining how and why the facts presented by him constitute a violation of his constitutional right invoked by him.
43. The Court notes that the Supreme Court held that the Court of Appeal correctly assessed that KEK in capacity of a respondent cannot be a party to the proceedings because it has no passive legitimacy. The Supreme Court had concluded that KEK is not a successor of the former Elektroekonomia and accordingly, it has no obligation towards the Applicant for payment of compensation due to termination of employment relationship by the former Elektroekonomia.
44. Therefore, the Court notes that the Judgment of the Supreme Court is reasoned and fully explains why it found that the lower instance court has correctly determined that KEK in capacity of a respondent does not have passive legitimacy. Having examined all the proceedings, the Court found that the proceedings before the regular courts have not been unfair or arbitrary (See case *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
45. Therefore, the Court considers that the challenged judgment of the Supreme Court contains all necessary reasons on which it is based, in accordance with the requirements of Article 31 of the Constitution and Article 6 of the ECHR.

46. The Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the Supreme Court on the lack of passive legitimacy of the respondent. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
47. Finally, the Court reiterates that the Applicant has not filed any compelling argument to establish that the alleged violations mentioned in the Referral represent violations of his right to fair and impartial trial (See case *Vanek v. Republic of Slovakia*, No. 53363/99, ECHR, Decision of 31 May 2005).
48. For the aforementioned reasons, the Court concludes that the facts presented by the Applicant do not in any way justify his allegation of a violation of the right to fair and impartial trial and that the Applicant has not sufficiently substantiated his claim.

FOR THESE REASONS

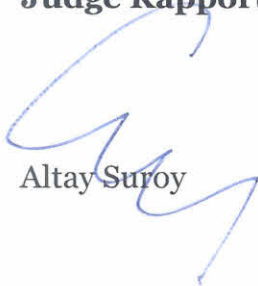
The Constitutional Court, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure, in the session held on 14 April 2016, unanimously

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; and
- IV. This Decision is effective immediately;

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

