



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 7 March 2016
Ref. no.:RK902/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI97/15

Applicant

Veli Kuçi

Constitutional review of Judgment Rev. no. 137/2015, of the Supreme Court of Kosovo, of 5 May 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, and
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Veli Kuçi (hereinafter: the Applicant), residing in village Shiroka, the Municipality of Suhareka.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 137/2015, of the Supreme Court of Kosovo, of 5 May 2015, which rejected as ungrounded the Applicant's revision against Judgment Ac. no. 632/2013, of the Court of Appeal, of 28 October 2014, regarding his request for compensation of damage in the name of unpaid pensions.
3. The challenged judgment was served on the Applicant on 10 July 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 24 [Equality Before the Law] Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial].

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 15 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 Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 28 September 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 26 January 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of facts

10. Since 1973, the Applicant established employment relationship with the Provincial Secretariat for Internal Affairs (hereinafter: PSIA), of the Socialist Autonomous Province of Kosovo.
11. The Applicant worked at several positions within the PSIA as an authorized officer. While performing his official duties with PSIA on 1 April 1981 the Applicant was wounded during the street protests (demonstrations).

12. On 25 September 1989, by Decision No. 05-580-366/86, based on the then applicable law, the Applicant's right to early retirement pension was recognized.
13. On 5 July 2010, the Applicant addressed the Ministry of Labor and Social Welfare (hereinafter: MLSW), with a request for "*reactivation of the old age and disability pension*", which he enjoyed until 1998.
14. On 19 July 2010, the MLSW rejected the request with reasoning that this is a problem of all pensioners in Kosovo, who were retired from the fund of the former Yugoslav Federation. The MLSW further stated that the right to an old age pension is realized with the age of 65.
15. On 10 August 2010, the Applicant filed lawsuit with the Municipal Court in Prishtina in the contested procedure against MLSW, requesting to oblige the MLSW to pay the compensation for material damage, namely the unpaid pensions since 1998 and the reactivation of old age and disability pension.
16. On 15 October 2012, the Municipal Court in Prishtina, (Judgment C. no. 1774/1000), rejected the statement of claim as ungrounded.
17. The reasoning of the decision further reads: "*... the passive legitimacy is lacking on the side of the respondent, considering that the passive legitimacy of the respondent is related to the material – legal relation, therefore, it decided to reject the statement of claim of the claimant as ungrounded*".
18. On 19 January 2013, the Applicant addressed the Court of Appeal against the Judgment mentioned in paragraph 14, claiming that it was rendered with "*serious violations of the law and the objective situation was not presented*".
19. On 28 October 2014, the Court of Appeal of Kosovo (Judgment Ac. No. 632/13), rejected the Applicant's appeal as ungrounded. In the reasoning of the decision, the Court of Appeal emphasized that the challenged decision is entirely correct and lawful, and that the MLSW is not a successor of the then Pension Fund and, therefore, lacks passive legitimacy in this legal matter.
20. On 28 December 2014, the Applicant filed a request for revision with the Supreme Court claiming that the judgment referred to in paragraph 17, was rendered with violation of the legal procedure provisions, erroneous determination of factual situation and erroneous application of the substantive law.
21. On 5 May 2015, the Supreme Court (Judgment Rev. no. 137/2015) rejected as ungrounded the Applicant's revision.
22. The Supreme Court stated: "*the second instance court, on the basis of a fair and complete determination of the factual situation, has correctly applied the provisions of the contested procedure, of which this Court acts ex-officio... The second instance court in its Judgment has provided sufficient reasons for the relevant facts for a fair trial of this legal matter, which this Court acknowledges as well...*".

23. For the sake of complete presentation of procedures and facts, the Court notes that on 11 May 2011, the Applicant had filed a Referral KI63/11 with the Court. The Applicant challenged Judgment A. no. 1239/2011 of the Supreme Court of Kosovo, of 23 March 2010 in an administrative conflict, which rejected the right to reactivation of disability pension. On 11 July 2011, the Court, by Resolution on Inadmissibility KI63/11, rejected his Referral in accordance with Rule 36 (2) (b) as manifestly ill-founded. In the present case, the previous Applicant's Referral with the Court, does not fall within the scope of the subject matter of this Referral, because the Applicant now specifically challenges other decisions of the regular courts, rendered in the contested procedure.

Applicant's allegations

24. The Applicant alleges that the Judgment of the Supreme Court violated Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution.
25. The Applicant requests the Court:

"We kindly ask the Constitutional Court for the annulment of the Decision by which I have been injured..."

Admissibility of Referral

26. The Court notes that in order to be able to adjudicate the Applicant's Referral, it shall first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
27. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law"

28. In this respect, the Court 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."

29. The Court also refers to 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:

[...]

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

30. The Applicant alleges that the challenged Judgment has violated his rights guaranteed by Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution.
31. The Applicant alleges that his rights were violated because of erroneous determination of facts. However, he does not substantiate his claim of erroneous determination of facts, which has resulted in a violation of his constitutional rights.
32. The Court observes that the Applicant is not satisfied with legal qualification of the facts and the law applied by the regular courts. The legal qualification of facts and applicable law are matters which fall under the domain of legality.
33. In this respect, the Court considers that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings before the regular courts, cannot of itself raise an arguable claim for breach of the Constitution (see *mutatis mutandis* case *Mezotur-Tiszazugi Vizgazdálkodási Tarsulat vs. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such violations of the Constitution, the Applicant must present convincing and compelling argument (Shih Case KI198/13, Applicant *Privatization Agency of Kosovo*, Constitutional Court, Resolution on Inadmissibility, of 13 March 2014).
34. Moreover, the Applicant did not explain how and why the conclusion of the Supreme Court violates his right to equality before the law, right to liberty and security and the right to fair and impartial trial.
35. The Court further considers that the Supreme Court reasoned in a detailed manner why the Applicant's statement of claim was rejected. In particular, the Supreme Court concluded that the MLSW cannot be a party in the proceedings in this legal matter due to lack of passive legitimacy. In the challenged Judgment, the Supreme Court states: "*The respondent is not legal successor, namely the inheritor of this authority and due to this it lacks passive legitimacy in this legal matter*".
36. The Court further considers that the proceedings before the Basic Court in Prishtina, the Court of Appeal and the Supreme Court were not unfair or arbitrary (see case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
37. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts. 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: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

38. For the reasons above, the Court concludes that the Applicant did not sufficiently substantiate and prove his allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, on 25 January 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;
- IV. This Decision is effective immediately

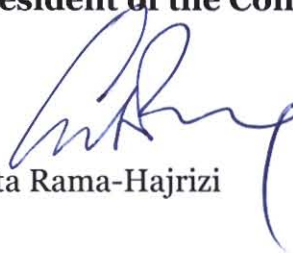
Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi