



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

Prishtina, on 17 August 2017
Ref. no.:RK 1115/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI139/16

Applicant

Sefedin Jetullahu

**Constitutional review of Judgment Rev. No. 168/16, of the Supreme
Court of Kosovo, of 14 July 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Sefedin Jetullahu (hereinafter: the Applicant), residing in village Vernica, Municipality of Vushtrri, represented by Sabri Kryeziu, a lawyer from Lipjan.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 168/2016 of 14 July 2016, (hereinafter: the challenged decision) of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), which was served on the Applicant on 13 September 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which has allegedly violated Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 [Right to a fair trial] and Article 1 of Protocol 1 to the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on Article 113 paragraph (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of Law No. 03/L-121 on the 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

5. On 1 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 January 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 8 February 2017, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court.
8. On 3 July 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to declare the Referral inadmissible as manifestly ill-founded on constitutional basis.

Summary of facts

9. The Applicant worked for several years in the Kosovo Energy Corporation, namely in the Generation Division - Power Plant Kosovo B (hereinafter: KEK).
10. On 18 December 2003, the Medical Commission recommended to the Applicant to submit to the Disability Commission to verify the degree of invalidity.

11. The Applicant then requested from the KEK authorities to approve the request for recognition of the labor invalid status and the request for the enjoyment of the supplementary pension under the KEK Pension Fund.
12. On 9 March 2004, KEK (Decision No. 60/1) approved the Applicant's request for the recognition of the status of first-class labor invalid and the request for supplementary pension, in the amount of 105 euro, starting on 1 March 2004 until 31 March 2009.
13. On 27 November 2008, the Applicant submitted a request to KEK authorities for reinstatement to work, as according to him, by KEK Decision No. 60/1, of 9 March 2004, his employment status was not determined after 31 March 2009.
14. In January 2009, the Applicant submitted a request to the Pension Administration Department of the Republic of Kosovo (hereinafter: PAD) for the approval of the pension request of persons with disabilities.
15. On 27 February 2009, PAD (Decision 5092190) rejected the Applicant's request for the enjoyment of the disability pension, on the grounds that full and permanent disability degree does not exist with the latter.
16. On 14 April 2009, the Applicant filed a complaint against PAD Decision of 27 February 2009 with the Appeals Disability Commission.
17. On 27 May 2009, the Appeals Commission rejected the Applicant's appeal as ungrounded and upheld the PAD Decision of 27 February 2009.
18. On an unspecified date, the Applicant filed a claim with the Municipal Court in Prishtina for reinstatement to work or the extension of the supplementary pension, until he reaches the retirement age, namely until 19 March 2016.
19. On 2 September 2013, the Basic Court in Prishtina (Judgment C. No. 109/2009) rejected the Applicant's claim as ungrounded, reasoning as it follows:

“The approval of the claimant’s request for pension, by the Respondent – KEK, due to invalidity, was legally based on UNMIK Regulation No. 2001/35, and the Statute of Supplementary Pension Fund of 2002; provisions of Article 2, item b) of the Statute. It transpires from the consideration of the Court that the legal grounds for retirement of the claimant due to invalidity at the work place, by the respondent, was correct. The court accordingly considers that the claimant’s statement of claim is to be rejected as grounded, because the rights that the claimant would realize if his pension request was approved were clear to him at the moment he filed the application with the Pension Fund”.
20. The Applicant filed an appeal within legal time limit with the Court of Appeal, against the Judgment of 2 September 2013 of the Basic Court in Prishtina.

21. On 24 September 2015, the Court of Appeal (Judgment Ac. No. 3870/2013) rejected the Applicant's appeal as ungrounded and upheld the Judgment of 2 September 2013 of the Basic Court in Prishtina as fair and lawful.
22. The Applicant filed a request for revision with the Supreme Court against the Judgment of the Court of Appeal of 24 January 2015, on the grounds of erroneous application of the substantive law.
23. On 14 July 2016, the Supreme Court (Judgment Rev. No. 168/2016) rejected the request for revision of the Applicant as ungrounded and upheld the Judgment of the Court of Appeal of 24 January 2016 and the Judgment of 2 September 2013 of the Basic Court in Prishtina.

Applicant's allegations

24. The Applicant alleges that the regular courts, by their actions, have violated his rights to a fair trial under Article 31 of the Constitution and Article 6 of the Convention, protection of property under Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 of the Convention, and his rights as guaranteed by Article 53 of the Constitution due to the fact that the regular courts have not taken into consideration the requirements of the above provisions when adjudicating the case.
25. In addition, the Applicant attached to his Referral the Judgment of the Constitutional Court of 18 October 2010 in Joined cases KI58/09, KI59/09, KI60/09, KI64/09, KI66/09, KI69/09, KI70/09, KI72/09, KI75/09, KI76/09, KI77/09, KI78/09, KI79/09, KI3/10, KI5/10, KI13/10.
26. As a result, the Applicant requests that the challenged decision be declared null and void and the case be remanded to the Supreme Court for reconsideration.

Admissibility of the Referral

27. The Court will examine whether the Applicant has met the admissibility requirements, as established in the Constitution and further specified in the Law and the Rules of Procedure.
28. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

“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.”

29. The Court further refers to Article 49 [Deadlines] of the Law, which stipulates:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”

30. In that regard, the Court concludes that the Applicant is an authorized party, has exhausted all available legal remedies and submitted his Referral within the four month deadline in accordance with the requirements of Article 49 of the Law.
31. The Court further refers to Article 48 [Accuracy of the Referral] of the Law, which stipulates:
- “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.”*
32. The Court also takes into account Rule 36 [Admissibility Criteria], specifically paragraph (1) (d) and paragraph (2) (b) of the Rules of Procedure, which provide:
- “(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”.
(...)*
33. The Court recalls that the Applicant alleges that the challenged decision has violated his rights guaranteed by Articles 31, 46 and 53 of the Constitution, as well as Article 6 and Article 1 of Protocol 1 to the Convention, however he does not substantiate further how and why his rights were violated.
34. In this regard, the Court notes that the Applicant is merely dissatisfied with the outcome of the completed procedure before the regular courts.
35. In this regard, the Court considers that the mere fact that the Applicant does not agree with the outcome of the decisions of the regular courts, in particular the challenged decision, is not sufficient for the Applicant to build a claim of constitutional violation. When alleging such violations of the Constitution, the Applicant must substantiate those allegations with convincing arguments and evidence so that the referral is successful.
36. In this respect, the Court recalls that it is not a fact finding court and correct and complete determination of factual situation is a full jurisdiction of the regular courts, while the role of the Court is only to ensure compliance with the rights guaranteed by the Constitution. Therefore, the Court cannot act as a fourth instance court (see: case *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also: case KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012.

37. In addition, it is not the role 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 the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the proceedings before the regular courts, in general, have been conducted in such a way that the Applicant had a fair trial (See: case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
38. The Court considers that the Applicant failed to substantiate and prove that the regular courts acted in an arbitrary or unfair manner when adjudicating his case. Therefore, the mere fact that the Applicant is dissatisfied with the outcome of the proceedings cannot raise an arguable claim of the violation right to fair and impartial trial (see: case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECtHR Judgment of 26 July 2005).
39. As to the Judgment of the Constitutional Court of 18 November, to which the Applicant refers, the Court notes that in the joined cases KEK, the Applicants (former KEK employees) requested the regular courts to decide on their property dispute with KEK, expressly referring to provisions of Article 3 of the Agreement and reiterating that the Law on Pensions, which establishes the Pension and Invalidity Insurance Fund, had not been approved yet and this fact was verified by the competent representatives of the Ministry of Labor and Social Welfare. As it can be observed, from the signed Agreement with KEK, the Applicants had a legitimate expectation that they would be entitled to the monthly indemnity in the amount of 105 Euro subject to the establishment of the Pension and Invalidity Insurance Fund in the future (See: Judgment of the Constitutional Court, *Gani Prekshi and 15 other KEK employees*, paragraphs 60, 67, 68, 70).
40. However, in the Applicant's case, the Court notes that by KEK Decision of 9 April 2003, the payment of the supplementary pension was not conditioned to be extended until the establishment of the Pension and Invalidity Fund. This decision (agreement) contains a strict deadline for exercising the supplementary pension payments of 105 euro, which was set to end on 31 March 2009, namely after 60 (sixty) months.
41. This difference (conditioning) in the Applicant's case is dealt with by the Supreme Court, which states that, "...the obligation of the respondent (KEK) in aspect of the duration of the claimant's right (the Applicant) cannot be related or conditioned with the establishment of Pension and Invalidity Insurance Fund ..."
42. In addition, the Supreme Court reasoned: "*Based on the above mentioned agreement – Decision which was not challenged by the claimant, the period of obligation of the respondent for compensating the payment of pension until 31 March 2009, was accurately defined, this obligation was performed by the respondent for the period of 5 years (60 months), in amount of 105 Euros per month, as it is defined in the Decision.*" It can be clearly seen that the Applicant at that time agreed to the criteria established by KEK, as the decision (agreement) in question was never challenged by the Applicant.

43. In this regard, the Court considers that the case that the Applicant refers to does not correspond to the circumstances of his case.
44. Based on all the circumstances elaborated above, the Court considers that the facts presented by the Applicant do not in any way show that the regular courts had denied him the rights guaranteed by the Constitution and the Convention.
45. Therefore, the Referral is manifestly ill-founded on constitutional basis and as such is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

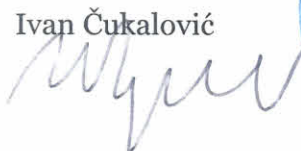
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 36 (1) (d) and 36 (2) (b), and 56 (2) of the Rules of Procedure, on 3 July 2017, unanimously

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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

