



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

Prishtina, 31 March 2014
Ref.no.: RK589/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI148/13

Applicant

Sylejmon Pllana

**Constitutional Review of the Judgement, Rev. no 30/2013, of the
Supreme Court of the Republic of Kosovo, dated 12 July 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

The Applicant

1. The Referral was submitted by Mr. Sylejmon Pllana (hereinafter: “the Applicant”) residing in Fushë-Kosova, who is represented by Mr. Hamdi Podvorica, a lawyer practising in Pristina.

Challenged decision

2. The Applicant challenges the Judgement, Rev. no 30/2013, of the Supreme Court of the Republic of Kosovo, dated 12 July 2013, which was served on him on 27 August 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment which allegedly was adopted in contradiction of Articles 7 [Values], 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution, Articles 46, of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: "the Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 13 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, "the Court").
6. On 24 September 2013, the President of the Court with Decision No. GJR KI148/13 appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 9 October 2013, the Court notified the Applicant and Supreme Court of the registration on the Referral. On the same date the Court also notified Kosovo Energy Corporation (KEK) with the Referral.
8. On 18 October 2013 KEK submitted the written submission challenging the Applicant's referral as inadmissible.
9. On 25 November 2013, the Court received the written submission of the Applicant's representative who challenged the allegations of KEK arguing that the Applicant has been the victim of the human rights violation.
10. On 27 November 2013, the Court received the judgment of the Municipal Court Judgment P. no. 2287/2007 dated 27 February 2009.
11. On 20 January 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 1 January 2007 the Applicant entered into permanent employment relationship with KEK.
13. On 16 May 2007, Decision No. 06/178, the Applicant was suspended from his work.
14. Following the disciplinary procedure against the Applicant, the KEK Disciplinary Committee on 27 July 2007 issued a Decision No. 06/273 and terminated the Applicant's employment. The Applicant was declared responsible for stealing property belonging to KEK. This action was determined to be a grievous violation of the Applicant's employment duties.
15. The Applicant challenged the decision of the Disciplinary Committee of 27 July 2007. By Decision No. 4559 of 6 August 2007, KEK rejected the Applicant's appeal and confirmed the decision of 27 July 2007.
16. On 27 February 2009 the Municipal Court in Pristina in the criminal case against the Applicant and another person (A. B.), related to the same act, issued a Judgment P. no. 2287/ dismissing the criminal indictment against the Applicant.
17. It was confirmed during the criminal procedure against the Applicant that, *inter alia*, he took 120 meters of type wire F-120 mm and loaded it on to a vehicle owned by A. B. It was also confirmed that these actions constituted elements of the criminal offence of theft pursuant Article 252.1 in conjunction with Article 23 of the Provisional Criminal Code of Kosovo. Notwithstanding these legal conclusions, the Municipal Court found that the actions of the Applicant and A. B. did not constitute a criminal offence because that offence was of little significance and there was lack of harmful and significant consequences.
18. On 19 October 2009 the Municipal Court in Pristina in the labour dispute, initiated by the Applicant, adopted a Judgement C1. no. 322/2007, and approved as grounded the Applicant's petition. By the same judgement the KEK Decisions of 27 July 2007 and 6 August 2007, regarding the termination the Applicant's employment were nullified and KEK was obliged to restore the Applicant into his previous work place.
19. The Municipal Court in Pristina based its reasoning on the Judgment issued in the criminal procedure case against the Applicant (P. no. 2287/07 on 27 February 2009), by which the Applicant was released of the indictment. The Municipal Court found that the criminal judgement of 27 February 2009 dismissing the indictment against the Applicant because it determined that the Applicant's actions of theft against KEK, his employer, were insignificant should influence the legality of the KEK decisions issued in the disciplinary procedure
20. Against that judgement KEK submitted an appeal on unspecified date.

21. On 28 September 2012 the District Court in Pristina issued the Judgment Ac. No. 133/2010 by which KEK's appeal was rejected and the Judgement of the Municipal Court of 19 October 2009 was confirmed.
22. Against the judgement of the District Court, KEK filled a revision alleging substantial violations of provisions of contentious procedure and erroneous application of the material law.
23. On 12 July 2013, the Supreme Court of Kosovo issued the challenged judgement Rev. no.30/2013 and approved as grounded the revision of the KEK. It also amended the judgements of the District Court dated 28 September 2012 and the Municipal Court dated 19 October 2009 and re-affirmed the KEK Decisions adopted in the disciplinary procedure against the Applicant.
24. In the reasoning the Supreme Court stated the following: *"In this case, a relevant and undisputable fact is that the claimant was terminated his employment relationship due to termination of employment contract due to grievous violation o(f) employment duties-stealing of KEK ownership.... However, by the case file it results that the respondent took its decision after having preliminary applied the disciplinary procedure in order to confirm the claimant's responsibility and after having confirmed his responsibility, the decision on termination of employment relationship was taken. SO, in this case the entire legal procedure was followed for rendering such decision as provided by Law on Employment Relationships, namely provision of Article 112, a law which as in force at time of submission of the claim, whereas it was repealed by provision of Article 99 of Labour Law no.03/L-212 of 1 November 2010."*

Applicant's Allegations

25. In his written submission of 25 November 2013, the Applicant clarified his allegations emphasizing that by the Judgment of the Municipal Court in Pristina, P.no.2287/07 of 27 February 2009, he was released of the indictment. He alleges that this judgement should be implemented in his labour dispute case and not the KEK decisions that were adopted in the disciplinary procedure.
26. The Applicant further argues that, as a citizen of Kosovo, he has the constitutional right to work as envisaged in Article 49 of the Constitution. He also argues that his right to property guaranteed by Article 46 of the Constitution has been violated because he has not obtained his income. Finally the Applicant argues that his right for judicial protection of his rights provided by Article 54 of the Constitution has also been violated.

Assessment of the admissibility of the Referral

27. In order to be able to adjudicate the Applicant's Referral the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Court and the Rules of Procedure.

28. The Court notes that the substance of the Applicant's argument before the Court is that the Judgment P. no. 2287/07 of 27 February 2009 issued in the criminal proceedings against him should take precedence over the KEK decisions issued in the disciplinary proceedings against him.
29. In this regard, the Court notes that the Applicant has used all available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court in Pristina has taken into account and answered his appeals on the points of law.
30. The Court recalls that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
31. The Court further notes that the mere 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 of the Constitution (see, *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, Mezotur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005). In addition, the mere fact that one disagrees with the legal conclusions a court makes in his or her case does not make that decision a denial of the right to an effective legal remedy as set forth in Article 54 of the Constitution. Moreover, the mere fact that a person is terminated from their employment for the offense of theft does not mean that the person's right to work somewhere in some capacity if there is available work and they are qualified to perform the work as guaranteed by Article 49 of the Constitution has been denied nor that their right to own property as been arbitrarily denied as guaranteed by Article 46 of the Constitution.
32. Therefore, this Referral is manifestly ill-grounded pursuant to Rule 36.1 of the Rules of Procedure which provides that "*The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded.*"

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1) (c) of the Rules of the Procedure, in its session held on 20 January 2014, unanimously

DECIDES

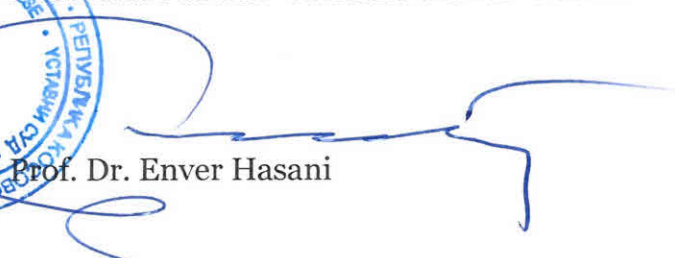
- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani