



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

Pristina, 4 April 2014
Ref.no.:RK591/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI155/13

Applicant

Xhemajl Sylejmani

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 302/2012, of 3 June 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Xhemajl Sylejmani from the village Gërmova, Municipality of Viti.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 302/2012, of 3 June 2013, served on the Applicant on 17 June 2013.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. No. 302/2012, of 3 June 2013. The Applicant requests reinstatement to his working place, and compensation of salaries for the time the Applicant was not working.

Legal basis

4. The referral is based on Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56.2 of the Rules of Procedure.

Proceedings before the Court

5. On 2 October 2013, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court)
6. On 10 October 2013, the Applicant filed with the Court an additional document.
7. On 28 October 2013, the President, by Decision GJR. No. KI155/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI99/13, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 11 November 2013, the Court notified the Applicant and the Supreme Court on the registration of the case.
9. On 24 January 2014, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 25 September 2009, the Municipal Assembly of Viti, through the Appellate Committee, rendered a Decision, no. 03-113/4782, which rejected the complaint of the Applicant challenging the decision terminating his working relationship with the Municipality. Further, the Decision provided:

“Whereas, as regards to appealing allegations in relation to termination of employment relationship, the Appellate Committee concludes that, here we don't have to do with termination of contract, but with expiration, and that the same voluntarily has not signed the contract even though by notice no. 03.07/4178 of 13.08.2009 was warned on consequences for not signing the contract”.

11. On 26 February 2010, the Independent Oversight Board of Kosovo (IOBK), decided upon complaint of the Applicant, by rendering Decision no. 02 (213) 2009, which rejected the complaint as ungrounded, and upheld the Decision no. 03-113/4782, of 25 September 2009, of the Appellate Commission, and Decision 03-118-4424 of 26 August 2009 terminating Applicant's working relationship.
12. On 2 May 2012, the Municipal Court in Viti, decided upon the claim suit of the Applicant, by rendering Judgment, C. no. 214/2011, thereby rejecting the claim suit as ungrounded. The Municipal Court further reasoned:

"From all mentioned above the court concludes that the statement of claim of claimant for returning him to workplace at the same time the compensation of personal incomes is ungrounded..."

The decision of court is based on legal grounds in relation to proceedings in contest by employment relationship pursuant to Article 475 and in conjunction with Article 477 of LCP."

13. On 10 July 2012, the District Court in Gjilan, decided upon complaint of the Applicant, by rendering Judgment, AC. no. 207/12, thereby rejecting the complaint as ungrounded, and upholding the Judgment C. no. 214/2011 of the first instance court. The District Court further reasoned:

"This court also considers that the first instance court when rendering this judgment has not committed violation of the contested procedure provisions of which this court takes care mainly, that it had determined the factual situation in the correct and complete manner and it has applied the substantive law in a correct manner..."

14. On 3 June 2013, the Supreme Court of Kosovo decided upon Revision of the Applicant, by rendering Judgment, Rev. No. 302/2012, rejecting as ungrounded the Revision against the Judgment of the District Court in AC. no. 207/12 of 10 July 2012. The Supreme Court further reasoned:

"... that lower instance courts by determining correctly and completely the factual situation has correctly applied the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded."

Applicant's allegations

15. The Applicant alleges that the Judgment of the Supreme Court of Kosovo, Rev.No.302/2012, of 3 June 2013, violated his rights guaranteed by the Constitution, as per Article 21 [General Principles], Article 24 [Equality before Law], Article 32 [Right to Legal Remedy] and Article 49 [Right to Work and to Exercise Profession] of the Constitution.
16. The Applicant concludes by requesting from the Constitutional Court:

"I wish to return to my workplace where I was, compensation for the period I haven't worked..."

Preliminary assessment of admissibility of the Referral

17. In order to adjudicate the Referral of the Applicant, the Court must initially examine whether the Applicant has met the requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.
18. In this regard, Article 113, paragraph 7 of the Constitution 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.”
19. In addition, Article 49 of the Law provides:

“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”.
20. In the actual case, the Court notes that the Applicant addressed the IOBK, the Municipal Court in Viti, the District Court in Gjilan, and ultimately the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the Supreme Court Judgment of 3 June on 17 June 2013, while he filed his Referral with the Court on 2 October 2013.
21. Therefore, the Court considers that the Applicant is an authorized party, and has exhausted all available legal remedies according to applicable law, and the referral was filed within the four-month timeline.
22. Nonetheless, the Court must also take into consideration the Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded”.
“(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights,
[...], or
d) when the Applicant does not sufficiently substantiate his claim.”
23. The Applicant alleges that by Judgment, Rev. No. 302/2012 of 3 June 2013, by which it upheld the judgments of the Municipal Court in Viti (Judgment C. no. 214/2011, of 2 May 2012) and the District Court in Gjilan (Judgment Ac. no. 207/12, of 10 July 2012) violate his rights, guaranteed by the Constitution, respectively Article 21 [General Principles], Article 24 [Equality before Law], Article 32 [Right to Legal Remedy], and Article 49 [Right to Work and Exercise Profession] of the Constitution.

24. In this regard, the Constitutional Court reiterates that in accordance with the Constitution, it is not its duty to act as a fourth instance court upon decisions rendered by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of Applicants Faik Hima, Magbule Hima and Bestar Hima, Inadmissibility Resolution of 16 December 2011).
25. The Constitutional Court can only consider whether the evidence has been presented in a fair manner, and whether the proceedings in general, viewed in their entirety, were conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, case Edwards v. United Kingdom, Application no. 13071/87, Report of the European Commission for Human Rights, 10 July Co1991).
26. Based on the case files, the Court notes that the reasoning provided by the final judgment of the Supreme Court is clear, and upon review of all proceedings, the Court also found that the proceedings in the regular courts were in no way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECHR, resolution of 30 June 2009).
27. Furthermore, the Supreme Court, in its judgment, confirmed that the “... *lower instance courts by determining correctly and completely the factual situation has correctly applied the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded [...]*”.
28. The Applicant alleges that his rights pursuant to Article 49 of the Constitution were violated. Article 49 provides:
 - “1. *The right to work is guaranteed.*
 2. *Every person is free to choose his/her profession and occupation.*”
29. In this regard, the “right to work is guaranteed” so long as an individual complies with the lawful terms of his contract for employment and the applicable laws of employment. In this referral there is no evidence that the Applicant ever signed his contract of employment or complied with the applicable employment laws of Kosovo. Indeed, the courts of Kosovo repeatedly found that he did not comply with the applicable laws of employment. Therefore, there is no evidence that the Applicant was denied the right to lawful work.
30. Based on reasons above, the Court notes that the facts submitted by the Applicant do not support in any way the allegation of violation of the constitutional rights, and that the Applicant has not sufficiently substantiated his allegations.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and d) of the Rules of Procedure, on 24 January 2014, unanimously

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani

