



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 13 August 2015
Ref. No.: VHPK 823/15

DECISION TO REJECT THE REFERRAL

in

Case No. KI179/14

Applicant

Bejtullah Sogojeva

**Constitutional Review of the Judgment, Rev. No. 396/2012 of the
Supreme Court of Kosovo of 11 September 2013**

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

Applicant

1. The Applicant is Mr. Bejtullah Sogojeva, with residence in Prishtina.

Challenged Decision

2. The Applicant challenges the Judgment, Rev. No. 396/2012 of the Supreme Court of Kosovo, of 11 September 2013, which rejected the Applicant's revision as ungrounded and upheld the Judgment of the District Court in Prishtina, AC. No. 1356/2011, of 24 January 2012.
3. The Applicant had submitted a Referral challenging the same decisions, wherein the Court declared the Referral inadmissible by reason of being manifestly ill-founded. (See Case KI05/14, Applicant: *Bejtullah Sogojeva*, Resolution on Inadmissibility of 7 July 2014).

Subject Matter

4. The subject matter of the Referral is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

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 Rules 32 (5) and 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 15 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 13 January 2015 the President of the Court by Decision, GJR. KI179/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI179/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
8. On 23 January 2015 the Court informed the Applicant of the registration of the Referral.
9. On 26 June 2015, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.
10. On 2 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to reject the Referral.

Summary of facts

11. The Court notes that the facts in the present Referral are the same as presented in Case KI05/14.
12. The Applicant was employed at the Medical Institute in Obiliq (hereinafter: the Employer) until 15 August 2006. On that date, his employment relationship with the Employer was terminated because he allegedly reached the full retirement age.
13. According to the Applicant, his working booklet wrongly stated that he was born on 15 March 1941 when in fact he was born on 15 August 1942. Thus, as alleged by the Applicant, the Employer had wrongly calculated his retirement age and as a consequence he had to retire before he reached the full retirement age.
14. On 15 August 2006, the Applicant initiated civil court proceedings before the Municipal Court in Prishtina.
15. Following that, on 8 December 2008, the Municipal Court issued a Judgment (Cl. No. 161/2007) and approved the Applicant's claim. The Applicant's employer as the respondent in the proceedings was obliged to compensate to the Applicant his annual personal income and the costs of the proceedings.
16. Following an appeal filed by the Employer against the Judgment of Municipal Court in Prishtina, on 15 September 2009, the District Court in Prishtina (Judgment, Ac. No. 569/2009) quashed the aforementioned Judgment of the Municipal Court and remanded the case for retrial.
17. On 22 April 2011, the Municipal Court in Prishtina (Judgment, C. No. 2360/09) rejected the Applicant's claim. The Applicant appealed against that Judgment.
18. On 24 January 2012, the District Court (Judgment, Ac. No. 1356/2011) upheld the Judgment of the Municipal Court in Prishtina.
19. Against the Judgment of the District Court in Prishtina of 24 January 2012, the Applicant submitted a revision to the Supreme Court of Kosovo, alleging that Judgment of the District Court in Prishtina was issued in violation of the Law on the Contested Procedure.
20. On 11 September 2013 the Supreme Court (Judgment, Rev. No. 396/2013) rejected the Applicant's revision as ungrounded. In this Judgment, the Supreme Court concluded that the employment relationship was terminated because the Applicant had reached the retirement age and that the Applicant's request for correction of his birth date was filed one (1) year after the decision for his retirement.

The procedure before the Constitutional Court in Case KI05/14

21. On 17 January 2014, the Applicant had submitted a Referral to the Court challenging the Judgment of the Supreme Court, Rev. No. 396/2012 dated 11 September 2013. This Referral was registered under number KI05/14.
22. On 7 July 2014, the Court issued Resolution on Inadmissibility, wherein it declared the Referral inadmissible for being manifestly ill-founded.
23. The Resolution on Inadmissibility was published in accordance with Article 20.4 of the Law and served on the Applicant. The receipt of service confirms that the Applicant has received the Court's Resolution of Inadmissibility on 17 July 2014.

Applicant's allegations

24. As alleged in the previous Referral KI05/14, the Applicant maintains that the challenged decision violated his right guaranteed by Article 31 and 54 of the Constitution.
25. In the present Referral, the Applicant does not present any new evidence nor does he raise any new complaints.
26. The Applicant again requests the Court to annul the Judgment, Rev. No. 396/2012 of the Supreme Court of 11 September 2013 and remand the case for retrial.

Assessment of the Referral

27. The Court notes that the present Referral filed by the Applicant is identical to his previous Referral KI05/14.
28. Regarding his previous Referral, KI05/14, the Court recalls that it had rendered a decision (Resolution on Inadmissibility in case KI05/14 of 7 July 2014), wherein it declared the Referral inadmissible for being manifestly ill-founded. The aforementioned Resolution on Inadmissibility was served on the Applicant and published in accordance with Article 20.4 of the Law.
29. As mentioned above, in the present Referral, the Applicant again challenges the Judgment of the Supreme Court, Rev. No. 396/2012 of 11 September 2013, raises the same allegations and presents the same facts and evidence as in his previous Referral, KI05/14.
30. In this regard, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

"The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous".

31. The Court reiterates that it had already adjudicated on case KIO5/14 and in the present Referral, the Applicant does not raise any new complaints nor does he present any new facts or evidence. Thus, the present Referral is entirely repetitive of the previous Referral, KIO5/14.
32. Therefore, based on Rule 32 (5) of the Rules of Procedure, the Court concludes that the present Referral is to be rejected because it is repetitive of the previous Referral, KIO5/14 already decided by this Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116 of the Constitution and Rule 32 (5) of the Rules of Procedure, on 13 August 2015, unanimously:

DECIDES

- I. TO REJECT the Referral;
- 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 effective immediately.

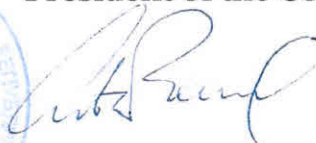
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi