



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

Prishtina, on 31 March 2014
Ref. no.:RK587/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI189/13

Applicant

Avdullah Rrustemi

**Constitutional review of the Judgment, Rev. I. No. 121/2012 of the
Supreme Court of Kosovo, of 29 July 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. Avdullah Rrustemi (hereinafter: the Applicant), with residence in Poklek i Ri, Municipality of Glogoc.

Challenged decision

2. The Applicant challenges the Judgment Rev. I. no. 121/2012, of the Supreme Court of Kosovo, dated 29 July 2013. In addition, the Applicant challenges the Judgment, Ac. Nr. 489/2010, of the District Court in Pristina, dated 15 February 2012, and the Judgment C. 37/09 of the Municipal Court in Glllogovc, dated 19 March 2010.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions which are *“allegedly unfair, unlawful and unconstitutional, because they denied the Applicant’s right to a fair and impartial trial and the right to work”*.
4. In this respect, the Applicant does not explicitly specify violation of any constitutional provision in particular, however the content of his Referral implies allegations of violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise the Profession] of the Constitution of the Republic of Kosovo.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law Nr. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law and Rule 56 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the Rules of Procedure)).

Proceedings before the Court

6. On 5 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 2 December 2013, the President of the Court by Decision No. GJR. KI189/13, appointed Judge Arta Rama-Hajrizi Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI189/13, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 18 December 2013, the Applicant was notified of registration of the Referral. On the same date the company NewCo Ferronikeli Complex L.L.C. and the Supreme Court of Kosovo were notified of registration of the Referral.
9. On 24 January 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 24 September 2007, the manager of the NewCo Ferronikeli Complex L.L.C. (hereinafter: the Employer), with regard to the disciplinary and material responsibility at work, imposed a written warning on the Applicant reminding him that in case of repeated violation of work duties his employment contract would be terminated early.
11. On 26 December 2008, the Employer notified the Applicant that as of 1 January 2009 his employment relationship would be terminated because of the expiry of the employment contract signed between them.
12. On 28 January 2009, the Labor Inspector, with Decision No. 164-21, ordered the Employer to review the Decision on the termination of the employment contract of their employee, respectively the Applicant.
13. On 18 February 2009, the Employer replied to the Labor Inspector, *“that they have carefully reviewed the case and that they remain with their previous decision that the contract may not be extended”*.
14. On 19 March 2010, the Municipal Court in Gllgovc, with the Judgment C. No. 37/09, specified:

“REJECTING as unfounded the statement of claim of claimant (Applicant) Avdullah Rrustemi from Lower Korrotice, against respondent NEWCO FERRONIKELI COMPLEX L.L.C. in Gllgovc (Employer) , requesting to confirm that claimant Avdullah Rrustemi established working relationship with the respondent, definite, to quash the Ruling of 03.02.2009 by which the working relationship was not extended after 01.01.2009 for the position of Train Conductor at the Logistics Department of the respondent, and to return the claimant to his job with the duties and responsibilities deriving from the position”.

15. In the abovementioned Judgment, the Municipal Court in Gllgovc further reasoned:

“...based on the notification of date 26.12.2008 issued by the respondent, notifying claimant Avdullah Rrustemi that the respondent does not extend the employment contract with the claimant, contract of date 25.07.2007, the Court considers that claimant Avdullah Rrustemi always established definite employment relations... So, the issue of extension of contract with the employer is exclusively an issue of the employer if he is willing to extend the contract with the employee, this depending if the employer has an interest or not for the issue... For the time that the claimant was employed by the respondent, he received salary every month and the respondent fulfilled its obligations towards the claimant...”

“...Allegations of the claimant that his right to employment with the respondent must be recognized in the position of Train Conductor in the logistics department with all the rights and obligations are not grounded on the Essential Labor Law of Kosovo...”

16. On 15 February 2012, the District Court in Prishtina, by Judgment Ac. No. 489/2010, rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court in Gllgovc.
17. On 29 July 2013, the Supreme Court by its Judgment Rev. I. No. 121 /2012, rejected the Applicant's request for revision of the Judgment of the District Court in Prishtina as ungrounded.
18. In the above mentioned Judgment, the Supreme Court reasoned:

"... Due to this situation, the Supreme Court of Kosovo assesses that based on the determined factual situation, the Courts of lower instances, correctly applied the material right when finding the statement of claim of claimant as unfounded, because the conclusion of employment relations is done according to the vacancy by meeting the terms for employment relations, respectively the employment relation is established according to the vacancy announcement, interview and Regulation for the Essential Labour Law no.2001/27 of date October 8th 2001. In the case at hand, the litigants signed a definite employment contract, for the period of 25.07.2007 through 31.12.2008, therefore, if the claimant shows for duty after the expiration of the contract doesn't mean that he established ER, since the provisions of Article 10 of the mentioned Regulation provides the manner of establishing employment relations and in the case at hand, the employment relation of claimant with the respondent was established for a definite period of time...

This Court also assesses that the challenged judgment doesn't consist of essential violations of provisions of contested procedures, because the second instance Court reviewed the allegations of the appeal related to the decisive facts and on the reasoning of the judgment provided sufficient justification approved by this Court as well".

19. The Applicant has also submitted to the Court the Judgment (P. No. 180/2009, of 19 September 2011) of the Municipal Court in Gllgovc, which is related to the criminal claim he filed against the management staff of the Employer, in which the Applicant claims that: *"A. B has no competencies for making such decisions (i.e. termination of employment contract), he stated this himself at the Municipal Court in Gllgovc, during the criminal proceedings against him and some other employees. As evidence, for proving this fact, attached to this submission you will find the Judgment P.nr.180/2009 of the Municipal Court of Gllgovc, in terms of provisions of Article 216 of LCP".*

Applicant's allegation

20. The Applicant alleges that the regular courts have erroneously applied the material law and have not applied Article 182.1 of the Law on Contested Procedure and Article 14 of the Labor Law (Official Gazette SAPK No. 12/89).
21. The Applicant alleges that the decisions of the regular courts are characterized by unlawful influences and connections, because according to him the higher

instance courts have only upheld the decisions of the lower instance courts disregarding the evidence contained in the case file.

22. The Applicant also alleges that unauthorized and incompetent persons informed him about the termination of his employment contract without any notice, disciplinary measure and with many other shortcomings.
23. The Applicant does not explicitly specify violation of any constitutional provision in particular but the content of his Referral implies allegations of violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise the Profession] of the Constitution.

Relevant legal provisions

REGULATION No. 2001/27 on the ESSENTIAL LABOR LAW IN KOSOVO

Article 10

Labor Contract

10.1 A labor contract may be concluded for:

- (a) an indefinite period of time, or*
- (b) a definite period of time.*

[...]

Article 11

Termination of a Labor Contract

11.1 A labor contract shall terminate:

[...]

(c) on the grounds of serious misconduct by the employee;

(d) on the grounds of unsatisfactory performance by the employee;

(e) following the expiration of the term of employment, and

(f) by operation of law.

Admissibility of the Referral

24. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs first to assess whether all the admissibility requirements, provided by the Constitution and specified by the Law and the Rules of Procedure, have been met.
25. With regard to the Applicant's referral, the Court refers to Article 113.7 of the Constitution, which 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”.

26. The Court also refers to Article 49 of the Law, which foresees:

“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. In all other cases, the deadline shall be counted

from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force”.

27. In the case at hand, the Court notes that the Applicant is an authorized party, that he has exhausted all legal remedies under Article 113.7 of the Constitution, and that the Referral was submitted within the legal deadline of four months, foreseen by Article 49 of the Law.

28. Regarding the allegations raised in the Referral, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if:

[...]

c) the Referral is not manifestly ill-founded”.

29. In the case at hand, the Court notes that the Applicant alleges that the decisions of regular courts are characterized by erroneous application of the material right, incomplete determination of facts, alleged unlawful connections and influences on regular courts in the performance of their duties, and many other alleged shortcomings.

30. The Constitutional Court reiterates that it is not a fact finding court and that the determination of the correct and complete factual situation is a jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a “court of fourth instance” (se Case Akdivar vs. Turkey, No. 2189/93, ECtHR, Judgment dated 16 September 1996, paragraph 65, and also see Case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility, of 5 April 2012).

31. In addition, the Referral failed to prove that regular courts have acted in arbitrary or unfair manner. It is not an obligation of the Court to replace its assessment of facts with that of regular courts, and, as a general rule, it is the duty of those courts to evaluate the evidence presented to them. The duty of the Constitutional Court is to determine whether the proceedings before the regular courts were fair in entirety, including the way the evidence was taken (See case Edwards vs. United Kingdom, No. 13071/87, Report of the European Commission for Human rights, of 10 July 1991).

32. In the case at hand, the Court considers that the decisions of the regular courts have legal basis, are well reasoned and are logical and coherent in general, and they also clearly explain the relation between the Applicant as the employee and his Employer, the nature of the employment contract concluded between them and the ways and the requirements allowed by the law with regard to the establishment and termination of the employment contract.

33. The Court notes that the Applicant was provided ample opportunities to refer arguments regarding his case before the regular courts. The Court also

emphasizes that a right to fair trial and correct trial as guaranteed by the Constitution and the European Convention on Human Rights does not imply 'material' but "procedural" correctness. This correctness in practice implies a litigation procedure in which the parties' appeals are heard and then they are put in an equal position before the regular courts (See Case *Star Cate Epiletka et al vs. Greece*, No. 5411/07, ECtHR, Decision of 6 July 2010).

34. With regard to the criminal claim filed by the Applicant against the management staff of the Employer (Judgment P. No. 180/2009, of the Municipal Court in *Glogovc*, dated 19 September 2011), the Court considers that the Judgment at hand cannot be used for the purpose of incriminating certain individuals and it does not have and cannot have any influence on the conclusion of this case.
35. The fact that the Applicant does not agree with the outcome of the case, cannot raise an arguable Referral for the violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise the Profession], of the Constitution (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment dated 26 July 2005).
36. In such circumstances, the Applicant has failed to sufficiently substantiate his allegation for violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution, because the facts he presented do not in any way show that the regular courts have denied him the rights guaranteed by the Constitution.
37. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with the Rule 36 (1) c) of the Rules of Procedure.

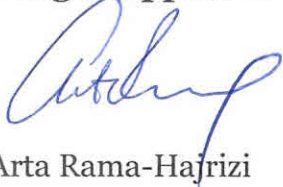
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) c) and 56 (2) of the Rules of Procedure, on 24 January 2014, unanimously

DECIDES

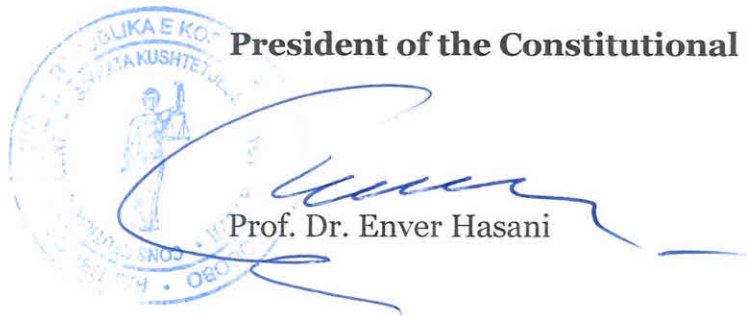
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur



Arta Rama-Hajrizi

President of the Constitutional Court



Prof. Dr. Enver Hasani