



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

Prishtina, 27 June 2014
Ref.no.:RK651/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI199/13

Applicant

Sinan Rashica

Constitutional review of Judgment Rev. no. 331/2011 of the Supreme Court of the Republic of Kosovo dated 11 January 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Sinan Rashica residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. no. 331/2011 of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), dated 11 January 2013, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly "*denies the right to Article 49 of the Constitution*".

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: the Law) and Rule 56 (2) 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 13 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 3 December 2013, the President of the Court, with Decision No. GJR. KI199/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI199/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani.
7. On 5 March 2013, the Supreme Court was notified of the Referral.
8. On 20 May 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 13 February 2004, the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicants request for pension under category "A" (No. 43/16) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
10. In the abovementioned decision of KEK it was determined that the payment of the pension for the Applicant will commence on 1 February 2004 and end on 29 February 2009, while the amount of monthly pension shall be 105 Euros. Furthermore the decision stated that the unsatisfied party may file appeal within the time limit of 15 days to the Committee for Reconsideration of Disputes, through the Pension Fund Administration.
11. According the submitted documents, no appeal was filed against this decision.

12. After 29 February 2009, KEK terminated the payment of the pension of the Applicant as specified in the agreement.
13. The Applicant submitted a claim before the Municipal Court in Prishtina.
14. On 21 February 2011, the Municipal Court in Prishtina (Judgment C.no. 362/2009) approved the claim submitted by the Applicant and ordered the KEK to continue the payments until the establishment of the Kosovo invalidity pension fund.
15. KEK submitted an appeal to the District Court in Prishtina against the judgment of the Municipal Court (Judgment C.no. 362/2009).
16. On 28 June 2011, the District Court in Prishtina (Judgment Ac. no. 497/2011) rejected as ungrounded the appeal submitted by KEK and upheld the judgment of the Municipal Court.
17. On 20 March 2012 the Municipal Court in Prishtina (Decision E. nr. 2139/11) ordered the enforcement of Decision (Judgment C. no. 362/2009).
18. On 4 April 2012 KEK appealed the above mentioned decision and requested that the execution procedure to be suspended until a final decision of the Supreme Court of Kosovo.
19. On 12 April 2013 the Municipal Court in Prishtina (decision E. no. 2139/11) rejected as ungrounded the request to suspend the execution procedure.
20. On 10 August 2011, KEK submitted a request for revision to the Supreme Court of Kosovo.
21. On 11 January 2013, the Supreme Court of Kosovo (Judgment Rev. no. 331/2011) approved the revision submitted by KEK.
22. The Supreme Court held:

“The lower instance courts have rightfully and completely confirmed the factual state but wrongfully applied the material right when stating that the claimants statement of claim is grounded. According to the decision number 43/16 dated 13.02.2004, it appears that the claimant himself has applied for category I pension, disability at work in accordance with UNMIK regulation number 2001/35 and Pension Fund Status of KEC and this request has been approved by the respondent and based on this decision the pension payment has started from 01.02.2004 and ended on 29.02.2009 in amount of €105 per month. The claimant could have submitted an appeal against this decision in time period of 15 days from the date it was received comity for dispute review through administration of Pension Fund, but the appeal was not submitted and pension was received until 29.02.2009. This court assessed that after payment of the wage as foreseen with the decision, the respondent has no obligation towards the claimant, since it fulfilled the legal obligation which resulted from the above-mentioned decision”.

23. On 14 June 2013, the Court of Appeal rejected as ungrounded the appeal submitted by KEK and confirmed the decision of the Municipal Court (E. no. 2139/11 dated 12 April 2012).

Applicant's allegation

24. The Applicant alleges that the Judgment of the Supreme Court of Kosovo *“denies his right under article 49 of the Constitution for temporary compensation of the salary. This right has been recognized by Judgments C. no. 362/2008 dated 21.02.2011 and Ac. no. 497/2011 dated 28.06.2011”*.
25. The Applicant further states that *“the reason why he signed and did not appeal the decision of KEK was because KEK promised that it would either be extended or they would be returned to work”*.
26. In addition the Applicant request from the Constitutional Court *“to recognize his right for temporary compensation until the establishment of the Kosovo invalidity pension fund”*.

Assessment of the admissibility

27. The Court observes that, in order to be able to adjudicate the Applicant complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
28. The Court refers to Article 49 of the Law, which 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 (...)”*.
29. The Court also takes into consideration Rule 36 (1) b) of the Rules of Procedure, which provides that:
- “(1) The Court may only deal with Referrals if:*
- ...
- b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant ...”*.
30. Under these circumstances, the Court notes that the Judgment that is challenged by the Applicant is dated 11 January 2013 and the latest decision is dated 14 June 2013, whereas the Referral was submitted on 13 November 2013. The Applicant's Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1 month after the date of the final decision.
31. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt

within a reasonable time and that past decisions are not continually open to challenge (see case *O'Loughlin and Others v United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

32. Moreover, with reference to cases adjudicated by the Court regarding the Temporary Compensation for the Termination of Employment by KEK, the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the afore-mentioned, because the agreement signed between KEK and other former employees of KEK was until the establishment of the Kosovo Invalidity Pension Fund without any reference to an end date as to the present referral.
33. It results that the Applicant's Referral is out of time.

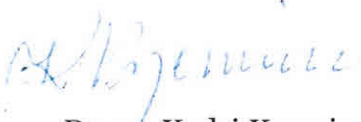
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 20 May 2014, unanimously

DECIDES

- I. TO DECLEAR the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur


Dr. sc. Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani