



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 15 September 2014
Br.ref.:RK708/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI220/13

Applicant

Hysen Çeku

**Request for constitutional review of the
Judgment Ac. No. 4952/2012 of the Court of Appeal of Kosovo,
dated of 27 May 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. Hysen Çeku, from Village Fusha e Pejes, Municipality of Peja (hereinafter, the Applicant), represented by Mr. Bashkim Latifi, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is the Judgment Ac. no. No.4952/2012 of the Court of Appeal of Kosovo, of 27 May 2013, rejecting as ungrounded the appeal of the Applicant and upholding the judgment C.no.297/12 of the Municipal Court in Peja, of 04.12.2012. The challenged Judgment was served on Applicant on 5 November 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights as guaranteed by Articles 3 (equality before the law), 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law] and 54 [Judicial Protection of Rights] of the Constitution and European Convention for Protection of Human Rights(ECHR) and Universal Declaration on Human Rights, without specifying concretely any article of these two documents

Legal basis

4. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court (hereinafter, the Law) and Rule 56 of Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Court

5. On 5 January 2014, the Applicant submitted the Referral to the Constitutional Court.
6. On 8 January 2014, the President of the Court appointed the Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy, Kadri Kryeziu and Arta Rama-Hajrizi
7. On 6 September 2013, the Court notified the Applicant and the Court of Appeal of the registration of the Referral.
8. On 7 February 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

9. On an unspecified date, the Applicant filed a claim with the Municipal Court in Peja, requesting the Department of Education of Municipality of Peja to pay to the Applicant a certain amount relative to the occasion of his retirement.
10. On 04 December 2012, the Municipal Court (Judgment C.no. 297/12) rejected the claim suit as ungrounded.

11. The applicant filed an appeal with the Court of Appeal in Prishtina, due to *"substantial violation of contested procedure provisions, erroneous and incomplete ascertainment of factual situation, and erroneous application of substantive law"*.
12. On 27 May 2012, the Court of Appeal (Judgment Ac.no.4952/2012) rejected as ungrounded the appeal of the Applicant, reasoning that *"the general collective contract is indeed concluded, and it was effective as of 1 January 2005, as provided by Article 64 of the Contract. Article 43 provides that an employee is entitled to a jubiliary award for 10 years of working experience with the last employer to an amount of a base salary, for 20 years of working experience with the last employer to an amount of a base salary"*
13. Furthermore, the Court of Appeal stated that *"pursuant to Article 90, paragraph 4 of the Labour Law, it is explicitly provided that the Collective Agreement may be concluded for a certain period, with a duration of not more than 3 years, while the paragraph 5 provides that the Collective Agreement applies to those employers and employees who assume the obligations as determined by collective agreement."*
14. Finally, the Court of Appeal concluded that *"In this case, it has been safely ascertained that the general collective agreement expired on 1 January 2008, and was not extended further and, therefore, it bears no legal effect on this concrete matter."*

Applicant's allegations

15. The Applicant claims that the challenged Judgment constitutes a violation of Article 3 [Equality before Law], Article 22 [Direct Application of International Treaties and Instruments], Article 24 [Equality before Law], Article 54 [Judicial Protection of Rights] of the Constitution.
16. The Applicant alleges that, *"In the concrete case, the courts have mismatched the legal grounds of the claim suit, reviewing it as a category in claiming rights as per UNMIK Regulation no. 2001/35 on pensions in Kosovo, since the legal basis of the claim suit is on the rights of employees, as per Article 55.1 of the Law no. 03/L-212 on Labour"*.
17. Furthermore, the Applicant alleges that *"courts should have adjudicated freely of any influence, in due regard of hierarchy of legal acts, as provided by Article 4 of the Law on Labour no. 03/L-212, which are a source of employee rights, such as: The Labour Law, Collective Contract, Internal Acts of the Employer, and the Working Contract, which in turn must be in accordance with the Labour Law provisions"*.
18. The Applicant requests the Constitutional Court of Kosovo *"to review the violations made by public authorities"* in the challenged judgments and *"annul them as unconstitutional and unlawful"*.

Assessment of admissibility of the Referral

19. First of all, the Court examines whether the Applicant has fulfilled the Referral admissibility requirements.
20. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law”.

21. The Court also 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”.

22. The Court considers that, taking into account these legal provisions, the Applicant would have been an authorized party, have exhausted all legal remedies provided by law and have submitted the Referral in the prescribed time limit.
23. However, the Court must also take into account Article 48 of the Law which provides:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated (...)”.

24. In addition, the Court also refers to Rule 36 of the Rules, which foresees:

“(1) The Court may review referrals only 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:

[...],

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...], or

(d) the Applicant does not sufficiently substantiate his claim”.

25. The Applicant has not complied with that requirement of admissibility, as the Referral is manifestly ill-founded.

26. In fact, the Court notes that the Applicant challenged the Judgment of the Municipal Court of Peja before the Court of Appeal, due to erroneous and incomplete ascertainment of factual situation, and erroneous application of material law. Now, he is challenging the Judgment of the Court of Appeal before the Constitutional Court, because the challenged Judgment violated his *guaranteed right for equality before the law and judicial protection of rights*.
27. At the outset, the Court recalls that, in accordance with the principle of subsidiarity, it is up to the Applicant to raise any alleged constitutional violation before the regular courts for them primarily to ensure observance of the fundamental rights enshrined in the Constitution.
28. In this respect, the Court notes that the Applicant has not raised with the Court of Appeal the alleged constitutional violation of his *guaranteed right for equality before the law and judicial protection of rights*.
29. Meanwhile, the Court recalls that the Court of Appeal rejected his appeal, because "*the general collective agreement expired on 1 January 2008, and was not extended further and, therefore, it bears no legal effect on this concrete matter*". However, the Applicant does not accurately clarify why and how such a decision has violated his right to equality before the law and judicial protection.
30. Moreover, the Court considers that the Judgment of the Court of Appeal provided extensive and comprehensive reasoning on the facts of the case and its legal findings are well reasoned and clear in answering the allegation presented by the Applicant. Thus, the Court finds that the proceedings before the regular courts have been fair and reasoned (See, *mutatis mutandis*, Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).
31. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).
32. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial. (See, *inter alia*, Edwards v. United Kingdom, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
33. In sum, the Court cannot observe arguments and evidence that the challenged Judgment Ac. No.4952/2012 of the Court of Appeal of Kosovo, dated of 27 May 2013, was rendered in a manifestly unfair and arbitrary manner

34. Therefore, the Court concludes that the Applicant has not substantiated his allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution, the ECHR and its protocols or the Universal Declaration of Human Rights.
35. It follows that the Referral is manifestly ill-founded and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 47 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 7 February 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. TO DECLARE this Decision effective immediately.

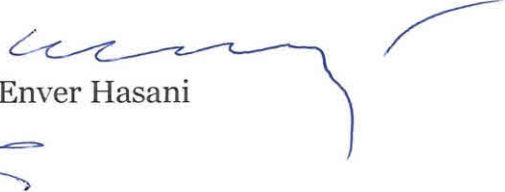
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani