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

Prishtina, 25 November 2013
Ref.no.:RK502/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI23/12

Applicant

Fehmi Krasniqi

Request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev.no.317/2011, dated 19 December 2011

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 Applicant is Mr. Fehmi Krasniqi (hereinafter: the Applicant) from Prishtina.

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme Court in Prishtina, Rev. No. 317/2011, dated 19 December 2011.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court in Prishtina, Rev. no. 317/2011, dated 19 December 2011, which rejected the Applicant's revision filed against the Judgment Ac. no. 343/2010, dated 4 June 2011, of the District Court in Prishtina.

Legal basis

4. Article 113.7 of the Constitution, Articles 22 and Article 27 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, of 15 January 2009; and Rule 54, Rule 55 and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Constitutional Court

5. On 7 March 2012, the Applicant submitted the Referral to the Constitutional Court. The Referral was registered under No. KI23/12.

6. On 15 November 2012, the President of the Court, by Decision GJR KI23/12 appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision KSH KI23/12 the President appointed the Review Panel composed of the Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani (members).

7. On 17 June 2013, 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 the facts

8. On 12 February 2004, Kosovo Energy Corporation – Pension Fund rendered Decision no. 171/29 concerning the Application for Pension, which is dedicated to the Applicant Mr. Fehmi Krasniqi, by which Mr. Krasniqi's request for early pension with Kosovo Energy Corporation (hereinafter: KEK) was approved and namely that of "B" category, all this in compliance with UNMIK Regulation 2001/35 and the KEK Pension Fund Statute.

9. In the abovementioned decision it was determined that the payment of pension for Mr. Krasniqi would start from 13 February 2004 and it would end on 29 February 2009, while the amount of monthly pension would be 105 Euros. The decision also stated that the unsatisfied party may lodge an appeal within the time limit of 15 days to the "Committee for Reconsideration of Disputes", through the Pension Fund Administration.

10. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the Pension Fund.

11. After 1 March 2009, KEK terminated the payment of pension to Mr. Fehmi Krasniqi and this fact is concluded on the basis of the Judgment of the Municipal Court CI. No. 529/2009.

12. On 19 January 2010, the Municipal Court in Prishtina rendered Judgment CI. no. 529/2009, rejecting the statement of claim of the claimant from Prishtina, by which he had requested from the Court to "oblige the respondent KEK to pay to the claimant the pension according to the Decision no. 171/129, dated 23 October 2003, starting from 01.12.2008 until the conditions for payment exist".

13. In the reasoning of this Judgment, the Municipal Court in Prishtina, among others, concluded:

> *"The parties do not dispute the fact that the claimant has realized supplementary pensions for 60 months, at a monthly amount of 105 Euros, nor do they dispute the fact that after 60 months, such payment was terminated to the claimant, namely, upon completion on 01.12.2008."* The Court also concluded that *"the fact was determined that the respondent fulfilled in entirety its obligations towards the claimant, provided by the claimant's decision on pension"* and that *"it follows that the statement of claim of the claimant on extension of the pension payment even after 1 March 2009 is ungrounded, therefore it decided to reject the same as such."*

14. Mr. Krasniqi filed an appeal against this Judgment with the District Court in Prishtina.

15. On 4 June 2011, the District Court in Prishtina rendered Judgment Ac. no. 343/2010, by which it rejected as ungrounded the appeal of Mr. Fehmi Krasniqi with the reasoning that:

> *"According to this court, the first instance court's conclusion that the statement of claim of claimant is ungrounded is fair. The first instance court judgment is based on a correct and complete determination of factual situation, to which the substantive law was applied correctly."*

16. Against this Judgment, Mr. Krasniqi filed request for revision with the Supreme Court of Kosovo.

17. On 19 December 2011, the Supreme Court of Kosovo, deciding upon the request of the Applicant, rendered Judgment Rev. 317/2011, by which it rejected as ungrounded the revision filed by the Applicant against the Judgment of the District Court in Prishtina.

18. In the reasoning of the Judgment, the Supreme Court stated:

"The Supreme Court of Kosovo, starting from such a situation of the matter, found that the courts of lower instances have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded."

Applicant's allegations of constitutional violations

19. The Applicant has not specified any provision of the Constitution of the Republic of Kosovo. He only alleges that by the challenged Judgment injustice was done to him.

Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court assesses whether the Applicant has met the admissibility requirements, which are provided by the Constitution and further specified by the Law and Rules of Procedure.

21. The Court also takes into consideration Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

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

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

22. Referring to the Applicant's Referral and the alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies provided by the law, which he had at his disposal, and he has filed his Referral within the legal time limit, provided by Article 49 of the Law on the Constitutional Court, therefore in these circumstances, the Court will examine the merits of the alleged constitutional violations, as presented by the Applicant.

23. In this aspect, the Court states that the Constitutional Court is not a fact finding court and on this occasion it wishes to emphasize that the correct and complete determination of factual situation is full jurisdiction of regular courts, as in this case of the Supreme Court, by rejecting the claimant's revision or the District Court in Prishtina, by rejecting the appeal of the appellant and that its role (the role of the Constitutional Court) is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, cannot act as "a fourth instance court" (see, *mutatis mutandis,* i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).

24. The mere fact that the Applicants are unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or Article 6 of ECHR (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat v. Hungary, Judgment of 26 July 2005 or Tengerakis v. Cyprus, no. 35698/03, decision dated 9 November 2006, § 74).

25. The Applicant did not present any valid argument that would substantiate his allegations of violation of Article 49 of the Constitution and, apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his constitutionally guaranteed right was violated. Furthermore, the regular courts, in regular and legal proceedings had concluded that the obligations that derive from the decision of the respondent KEK and that are favorable to the claimant Mr. Krasniqi have been fulfilled in entirety. In fact, the Applicant did not at all challenge the proceedings and the process in its entirety, but he challenged the final outcome of the court processes, which was not favorable to him.

26. Furthermore, in order for a judgment or a decision of a public authority to be declared unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the public authority, as such, will be an indicator of a violation of the requirement for a fair trial and if the unfairness of that decision is so evident that the decision can be regarded as grossly arbitrary." (See, ECtHR, Khamidov v. Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).

27. The Constitutional Court did not find elements of arbitrariness or alleged violation of human rights in the Judgment Rev.316/2011 dated 14 June 2012 of the Supreme Court, as alleged by the Applicant.

28. As to the allegation for violation of the right guaranteed by Article 24 of the Constitution (Equality before the Law) which the Applicant alleges that it was violated, substantiating it by the fact that the Supreme Court rendered a different judgment in an identical case, the Court concludes that in the case mentioned by the Applicant, the conducted judicial process was essentially different.

29. In fact, in the case of the Applicant Z. B. (which is alleged to be identical), also a KEK pensioner, the Municipal Court and the District Court had decided in favor of the Applicant Z. B., but after the revision filed by KEK, the Supreme Court Rev. no.152/2009 dated 12 April 2010, approved as grounded the revision of KEK, that is, the responding party and not the revision of the claimant, and in these circumstances, the Court cannot conclude that there has been a violation of Article 24 of the Constitution.

30. The Court also states that the Applicant did not present as evidence an act of an individual agreement concluded between him and KEK, as the Applicants in the Referrals filed by a group of KEK employees, also former pensioners of this company, had, where it was stated that the pension would be paid "*until the establishment and functioning of the Pension Disability Insurance Fund of Kosovo*". (See Judgments of the Constitutional Court, dated 23 June 2010 of the Applicant Mr. Imer Ibrahimi and 48 others, and of 23 June 2010 of the Applicant Mr. Gani Prokshi and 15 others), but instead he had a decision on pension for a precisely fixed term, which he accepted and did not challenge it, therefore the Court does not find arguments to treat this Referral as other abovementioned cases of this Court, which were filed by groups of former KEK employees.

31. In these circumstances, the Applicant did not "sufficiently substantiate his claim". Therefore, the Court, pursuant to Rule 36 paragraph (2) item c) and item d), finds that the Referral should be rejected as being manifestly ill-founded, and consequently

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

DECIDES

I. TO REJECT the Referral as inadmissible;

II. This Decision shall be notified to the Parties and it shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Kadri Kryeziu Prof. Dr. Enver Hasani