



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 4 November 2013
No. ref.:RK489/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 32/13

Applicant

Januz Januzi

**Constitutional review of the decision of the Supreme Court of Kosovo,
Rev.No.329/2010, of 19 December 2012**

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

The Applicant

1. The Applicant is Mr. Januz Januzi, from Prishtina (hereinafter: the "Applicant").

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo Rev.No.329/2010, of 19 December 2012, which was served to him on 17 February 2013.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court of Kosovo Rev. No.329/2010, violates his rights regulated by the Law on Labor and guaranteed by the Constitution.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 20 and 22.7 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: the "Law") and Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 11 March 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo and the same has been registered under number KI 32/13.
6. On 5 April 2013, the Court notified the Applicant and the Supreme Court of Kosovo on registered Referral.
7. On 25 May, the President (by decision No. GJR. KI 32/13), appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day, the President (by decision No. KSH. KI 32/13) appointed the Review Panel composed of judges: Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
8. On 12 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 28 February 1991, the Secretariat of the Municipal Assembly of Prishtina rendered a decision [No.03/116-3] to terminate the employment relationship of the Applicant.
10. On 3 September 2003, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina, requesting to be reinstated to the position he was working for 35 years, namely until 28 February 1991.

11. On 29 January 2004, the Applicant wrote a request to Ombudsman Institution, stating that so far he did not receive a response to his request he had addressed to the Executive Director of the Municipal Assembly of Prishtina, on 3 September 2003.
12. On 10 March 2004, the Ombudsman Institution wrote to the Municipality of Prishtina, requesting that the later responds to the Applicant's request as soon as possible.
13. On 7 April 2004, the Municipality of Prishtina offered an employment contract to the Applicant, what he signed on the same day.
14. On 16 March 2005, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina requesting the payment of the jubilee award, in amount of 245 euro.
15. On 27 June 2005, the Municipality of Prishtina rendered a decision [01 No.118-248], by which the Applicant was retired, due to the fulfillment requirements on the old age pension, according to the Law on Labor that was in force at that time.
16. On 1 July 2005, the Applicant submitted a request to the Executive Director of the Municipal Assembly of Prishtina requesting additional payment to the pension, equivalent to two months salaries, which is 484 Euro.
17. On an unspecified day in 2005, against the Municipality of Prishtina, the Applicant filed a lawsuit with the Municipal Court in Prishtina, requesting the compensation for the salaries and the jubilee award.
18. On 12 April 2006, the Municipal Court in Prishtina issued a Judgment [C1 br.344/2005] approving the claimant's statement of claim as grounded. In its Judgment the court stated: *„The respondent, Municipality of Prishtina, is **OBLIGED** to pay to the claimant in the name of the jubilee award and three salaries after retirement, the amount of €605, with the interest rate, foreseen by banks for deposit for one year without specific destination, starting from 01.07.2005, when he was retired until the final payment, as well as to pay the costs of proceedings at the amount of €78, all this within the time limit of 15 days, from the day the judgment becomes final, under the threat of forced execution.”*
19. On 2 June 2006, the Applicant wrote to the Executive Director of the Municipal Assembly of Prishtina requesting the execution of the Judgment of the Municipal Court [C1. No.344/2005] of 12 April 2006.
20. On 15 March 2007, against the Municipality of Prishtina, the Applicant filed a lawsuit with the Municipal Court in Prishtina requesting the payment of the salaries for the period from 30 September 2003 until 30 March 2004.
21. On 29 May 2007, the Municipal Court in Prishtina issued the decision [C1. No. 109/07], rejecting the lawsuit of the Applicant as inadmissible, since it was filed out of time.

22. In the reasoning of its decision the Municipal Court stated that: „[...] *The Court concludes that the claimant requests the compensation of personal incomes for the time he did not act-work and that is from 03.09.2003 to 30.03.2004. Consequently, the Court determined that the claimant failed to meet the deadline for protection of the violated rights, respectively the request for compensation of personal income, as it is provided by Article 186 of LCP, where it is cited that: “Compensation for damage shall be due from the moment the damage taking place.” In Article 372 of LCP it is cited: “Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due,” while the Article 376, item 1 provided that the compensation claims for damage inflicted shall become statute-barred three (3) years after the injured party learnt of the damage and of the person that inflicted it.”*“.
23. On 16 November 2007, the Applicant filed an appeal against the decision of the Municipal Court [C1. No. 109/07], of 29 May 2007.
24. On 4 August 2010, the District Court in Prishtina issued a Judgment [Ac.No.672/2008], rejecting the Applicant's appeal as ungrounded, and upholding the decision of the Municipal Court [C1. No. 109/07], in its entirety.
25. In the enacting clause of its Judgment the District Court stated: „ *The District Court found that the first instance court in this legal matter has correctly applied the substantive law, when it found that the claimant filed claim after the deadline provided by Article 372 and Article 376 par.1 of the Law on Obligation Relationship. Also, there are no violations of provisions under Article 182 par.2 item b, g, j, k and m of contested procedure, for which this court ex-officio takes care.*“
26. On an unspecified date, the Applicant filed for a revision with the Supreme Court of Kosovo, against the Judgment of the District Court in Prishtina [Ac.No.672/2008].
27. On 19 December 2012, the Supreme Court issued a decision rejecting Applicant's request for revision as ungrounded.
28. In the enacting clause of its ruling the Supreme Court stated: „*Against the ruling of the second instance court, the claimant filed revision without mentioning the reasons due to which the revision could be filed with the proposal that the challenged rulings to be modified and therefore the statement of claim of the claimant is rejected as ungrounded.*“

Applicant's allegations

29. The Applicant alleged that these courts' decisions have violated his rights regulated by the Law on Labor and guaranteed by the Constitution of Kosovo.
30. The Applicant addressed to the Court requesting:

„to receive the monetary compensation for the period from 03.09.2003 until 31.04.2004, in the amount of €848, as well as the interest rate from 03.09.2003 until the final payment “.

Assessment of admissibility of the Referral

31. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the admissibility requirements, which are laid down in the Constitution and further specified by the Law and Rules of Procedure.
32. The Court notes that the Applicant did not specify what are the concrete rights regulated by the Law on Labor and guaranteed by the Constitution, violated by regular courts' decisions, although 48 of the Law on Constitutional Court of the Republic of Kosovo stipulates:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of a public authority is subject to challenge.”

33. On the other hand, Rule 36.2 of the Rules of Procedure provides that: *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

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

d) when the Applicant does not sufficiently substantiate his claim “.

34. In this concrete case, the Applicant did not indicate how and why the regular courts violated his rights regulated by the Law on Labor, nor provided any evidence on allegedly violated constitutional rights.
35. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, 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 vs. Spain [VK]*, No. 30544/96, Judgment of the European Court of Human Rights, of 21 January 1999).
36. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial

(see case, *Edwards vs. United Kingdom*, App. No. 13071/87, Report of the European Commission of Human Rights, adopted 10 July 1991).

37. In fact, the Applicant did not substantiate his claims on constitutional grounds since he failed to show how and why the regular courts violated his rights guaranteed by the Constitution. Based on the case file the Constitutional Court does not find that the relevant proceedings in the regular courts were unfair or arbitrary (see *mutatis mutandis*, *Shub vs. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
38. For all the aforementioned reasons, the Court concludes that the Referral does not meet the requirements from 48 of Law and Rule 36. 2 (b) and (d) of the Rules of Procedure, and as such is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure, on 12 September 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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


Snezhana Botusharova



President of the Constitutional Court


Prof. Dr. Enver Hasani