



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

Prishtina, on 22 August 2014
Ref. no.: RK704/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI67/14

Applicant

Muharrem Sopa

**Request for constitutional review of Judgment of the Supreme Court of
Kosovo, Rev. no. 59/2013, of 23 October 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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Muharrem Sopa from Suhareka.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. no. 59/2013, of 23 October 2013, which was served on the Applicant on 5 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which according to the Applicant, has allegedly violated the rights guaranteed by the Constitution of Kosovo, under Article 31 [Right to Fair and Impartial Trial].

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 56 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 2 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 April 2014, by Decision GJR. KI67/14, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur, and on the same date appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 23 May 2014, the Court requested from the Applicant the power of attorney for his representative and the court decisions missing in the documentation submitted by the Applicant. The Court has not received any reply from the Applicant within required time limit.
8. On 23 May 2014, the Supreme Court was notified on the registration of the Referral and was served with a copy of the Referral.
9. On 23 May 2014, the Court sent to the Basic Court in Prizren, Branch in Suhareka, the notification on the registration of the Referral, thereby requesting also the additional documents regarding this case.
10. On 28 May 2014, the Court received from the Basic Court in Prizren, Branch in Suhareka, the requested additional documents, based on which it was confirmed the date when the Judgment of the Supreme Court was served on the Applicant.
11. On 26 June 2014, Judge Kadri Kryeziu notified the Court in writing of his not taking part in the deliberations for the period June-July 2014 awaiting the Court's decision regarding certain allegations raised against him.

12. On 1 July 2014, the Review Panel considered the report of Judge Rapproteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 13 October 2000, the Municipal Court in Suhareka rendered the Judgment C. no. 85/2000, by which the Applicant's claim, filed together with his work colleague J. B., for reinstatement to his working place as a pedagogical advisor in the Municipality of Suhareka, was rejected as ungrounded.
14. On 2 April 2001, the District Court in Prizren rendered the Judgment Ac. no. 100/2000, by which approved as grounded the appeal of the Applicant and of his work colleague J. B., quashed the Judgment of the Municipal Court in Suhareka C. no. 85/2000 and remanded the case for reconsideration to the first instance court.
15. On 14 May 2002, the Municipal Court in Suhareka once more, by Judgment C. no. 205/202, rejected as ungrounded the Applicant's claim with the reasoning of the lack of passive legitimacy of the responding party – the Municipality of Suhareka.
16. On 18 December 2003, the District Court in Prizren approved again the appeal of the Applicant's representative and quashed the Judgment of the Municipal Court in Suhareka, C. no. 205/2002, by remanding the case for retrial to the first instance court.
17. On 25 October 2011, the Municipal Court in Suhareka rendered the Judgment C. no. 153/06, by which rejected as ungrounded the claim filed by the Applicant and second claimant, J. B., for reinstatement to work with the Directorate of Education of the Municipality of Suhareka.
18. In the reasoning of this Judgment, in the part dedicated to the Applicant, the Municipal Court stated: *"Based on the administered evidence, the Court found that the statement of claim of the first claimant must be rejected as ungrounded and that the decision of the respondent on the termination of the employment relationship is not unlawful because the requirements of Article 75 par. 2 item 3 of the Law on Fundamental Rights of Employment Relationship (applicable pursuant to UNMIK Regulation) were met, where is stated that the employment relationship is terminated to employee without his consent if he was absent from work over 5 consecutive days"*.
19. On 5 November 2012, the District Court in Prizren, by Judgment Ac. no. 528/2011 rejected as ungrounded the joint appeal of the Applicant and of J. B. and upheld the Judgment of the Municipal Court in Suhareka C. no. 153/06 of 25 October 2011 by *"recognizing in entirety the factual conclusions and legal stance of the first instance court when deciding upon the claimants' appeal"*.
20. Against this Judgment, the Applicant timely filed revision with the Supreme Court of Kosovo, due to violation of the civil procedure provisions and erroneous application of the material law.

21. On 22 October 2013, the Supreme Court of Kosovo, deciding upon the request for revision, rendered the Judgment Rev. no. 59/2013, by which rejected as ungrounded the revision filed by the Applicant, stating among the other in the reasoning of the Judgment that *"the lower instance courts, based on the factual situation determined correctly and completely, have applied correctly the provisions of the contested procedure and the substantive law, when finding that the statement of claim of the claimant is ungrounded, because the Municipal Education Directorate of the Municipality of Suhareka is established based on UNMIK Regulation 2000/45 and the latter does not have a legal basis to transfer the obligations of the Pedagogical Institute, because the same body does not exist in this new educational system and nor the working position of the pedagogical advisor in this directorate"*.

Applicant's allegations

22. The Applicant alleges that the Judgment of the Supreme Court has violated the rights guaranteed by the Constitution, pursuant to Article 31 [Right to Fair and Impartial Trial] by emphasizing that this right is also protected by the European Convention of Human Rights.
23. The Applicant requested from the Court to annul all decisions of the regular courts and to approve his Referral as grounded.

Admissibility of the Referral

24. To adjudicate the Applicant's Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
25. In this respect, 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 concludes that the last decision regarding this case is the Judgment of the Supreme Court, Rev. no. 59/2013, of 22 October 2013, which was served on the Applicant on 5 December 2013, while the Applicant submitted his Referral to the Court via mail on 2 April 2014, meaning that he submitted his Referral to the Court, in compliance with the requirements of Article 113.7 of the Constitution and within the time limit, provided by Article 49 of the Law.
27. The Court notes that the Applicant alleges that the Decision of the Supreme Court, Rev. no. 59/2013 of 22 October 2013, by which the request for revision, filed against Decision Ac. no. 528/2011, of the District Court in Prishtina, of 5 November 2012, has been rejected as ungrounded, and at the same time he has requested from the Court the annulment of all other court decisions, rendered before this Judgment.

28. As regards to the Applicant's allegations for violation of Article 31 of the Constitution, the Court recalls that Article 31 of the Constitution [Right to Fair and Impartial Trial] provides:

"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law".

[...]

29. In respect to the above, the Court notes that the Applicant only stated the violation of this constitutional provision, without providing any evidence of the way and nature of that violation. The Court notes that the simple description of the provisions of the Constitution and the conclusion that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the Convention regarding a fair and impartial trial.
30. Having considered the Applicant's Referral and the facts presented in it, the Court finds that in all court procedural stages, the appeals of the Applicant have been of the legal character, not of the constitutional nature or of the possible violation of human rights protected by the Constitution, which have been for the first time referred with the Constitutional Court, lead the Court to conclusion that the Applicant is in fact unsatisfied with the final outcome of the adjudication of his case.
31. The Court further holds that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the employment of the Applicant was terminated on legal ground or not, because this is a jurisdiction of a regular court. It is essential for the Court the issues on which existence depends the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicant (See, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
32. However, the Court notes that regarding the Applicant's allegations, the Supreme Court in its Judgment had clearly stated that, *"the statement of claim of the claimants is ungrounded, because the Municipal Education Directorate of Suhareka is established based on the UNMIK Regulation 2000/45 and the same does not have a legal base to bear the obligations of the Pedagogical Institute"*. Under these circumstances, the Court concluded that the Judgment is well reasoned and there is no question of arbitrariness.

33. The Court recalls that the mere fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, *Mezotur Tizsazugi Tarsulat v. Hungary*, or the Resolution of the Constitutional Court, Case KI128/12 of 12 July 2013, *the Applicant Shaban Hoxha* in the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).
34. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral should be rejected as manifestly ill-founded and be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, on 1 July 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. To notify this Decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani