



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 26 May 2014
Ref.no.:VTK632/14

DECISION TO STRIKE OUT THE REFERRAL

in

Case no. KI77/13

Applicant

Fatmir Rushiti

**Constitutional review of the Judgment of the Supreme Court, Rev. no.
82/2011, of 15 March 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, 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 Referral was submitted by Mr Fatmir Rushiti (hereinafter: the Applicant), residing in the Municipality of Prishtina, represented by the Law Firm "Sejdiu & Qerkini", L.L.C.

Challenged decision

2. The Applicant requests constitutional review of the Supreme Court Judgment, Rev. no. 82/2011, of 15 March 2013, served upon the Applicant on 15 March 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court, which is alleged to have violated the Applicant's rights as per Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a Fair Trial) of the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: ECHR).
4. The subject matter is also the submission of the Applicant to withdraw the referral for constitutional review of the Supreme Court Judgment, Rev. no. 82/11.

Legal basis

5. The Referral is based on the Article 113.7 of 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 Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 31 May 2013, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 31 May 2013, the President of the Court, by Decision No. GJR. KI77/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI77/13 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 8 July 2013, the Court sent a copy of the Referral to the Supreme Court.
9. On 5 September 2013, the Court notified the Applicant and the Post and Telecommunications of Kosovo (hereinafter: the PTK), of the registration of the Referral, and requested to be informed on the status of the Applicant, and whether the PTK has enforced the Judgment of the Municipal Court in Prishtina, C. l. no. 426/06, and the Judgment of the District Court in Prishtina, Ac. no. 18/2008, as provided by the agreement between the PTK and the Applicant.

10. On 23 January 2014, the Applicant submitted to the Court a submission for withdrawal of the referral for constitutional review of the Supreme Court Judgment, Rev. no. 82/11, with the justification that the Supreme Court, by Ruling PPC. no. 6/2013, annulled the Judgment Rev. no. 82/11, and concluded that the revision was withdrawn, and it therefore upheld the Judgment of the District Court in Prishtina, AC. no. 18/2008.
11. On 11 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court to strike out the Referral.

Summary of facts

12. On 24 November 2006, the Applicant filed a claim with the Municipal Court, thereby requesting the annulment of the Decision of the Disciplinary Commission at the first instance, no. 01-2281/06, of 4 October 2006, and the decision of the Disciplinary Commission of the second instance, no. 02-2281/06, of 2 November 2006, by which the Applicant was imposed the measure of termination of employment relationship, and by which the Applicant also requested to order the PTK to reinstate the Applicant to his working position, with all rights from the employment relationship, from the date of his suspension from work on 9 June 2006, to his final reinstatement to work.
13. On 4 June 2007, the Municipal Court in Prishtina, by Judgment C. I. no. 426/06, had approved the claim and the statement of claim as grounded.
14. On 31 January 2011, the District Court in Prishtina, by Judgment Ac. no. 18/2008, rejected the appeal of the respondent PTK as ungrounded, and upheld the Judgment C. I. no. 426/06, of the Municipal Court in Prishtina.
15. On 15 March 2011, the respondent PTK filed a revision against the second instance Judgment Ac. no. 18/2008.
16. On 14 April 2011, the respondent PTK addressed the Municipal Court in Prishtina, for the Supreme Court, by which letter the respondent withdrew the revision filed on 15 March 2011. Nevertheless, the Municipal Court has not filed this letter with the Supreme Court.
17. Therefore, on 15 March 2013, the Supreme Court, by not having the knowledge on the withdrawal of revision, rendered the Judgment Rev. no. 82/2011, approved the revision of the respondent PTK, and modified the Judgment of the District Court in Prishtina, Ac. no. 18/2008, on 31 January 2011, and the Judgment of the Municipal Court in Prishtina, C. I. no. 426/2006, of 4 June 2007, therefore rejecting the claim and the statement of claim as ungrounded.
18. On 8 May 2013, the Applicant filed a proposal for repeating the procedure before the Supreme Court. Nevertheless, the Applicant had not included this fact with the Referral filed with the Constitutional Court on 31 May 2013. Furthermore, the Applicant claimed that he could not have used this legal remedy.

19. On 13 November 2013, the Supreme Court, by Decision PPC. no. 6/2013, allowed the request of the Applicant for repetition of procedure and annulled the Judgment Rev. no. 82/11, of 15 March 2013, and concluded that the revision was withdrawn, thereby upholding the Judgment of the District Court in Prishtina, Ac. no. 18/2008.

Applicant's allegations

20. The Applicant alleges that his rights as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 of the ECHR, were violated as a result of the Supreme Court decision at revision, independently of the withdrawal of revision by the Applicant.

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. In this regard, the Court refers to Rule 32 (4) of the Rules of Procedure, which provides that "*The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*"
23. The Court considers that the rendering of the Ruling PPC. no. 6/2013, of the Supreme Court, of 13 November 2013, which upheld the judgment of the District Court, shows that the position of the Applicant has significantly changed, and that his referral now does not have any justification, and that the goal that the applicant wanted to achieve, has been completely achieved.
24. The Court also takes into account the letter of the Applicant of 23 January 2014 for withdrawal of his Referral, and since the Applicant now does not have any unresolved case or dispute in relation to the constitutionality of the Supreme Court decision, Judgment Rev. no. 82/2011, of 15 March 2013, the case is moot.
25. Due to the reasons above, the further review of the Referral is hereby terminated, and the Court finds that there are no specific circumstances related to respect of human rights, which would require further consideration of the referral (see, *mutatis mutandis*, case no. KIO6/13, Applicant *Sylejman Mustafa*, Inadmissibility Resolution of 21 November 2013).
26. Therefore, in compliance with Rule 36 (4) of the Rules of Procedure, the Applicant' Referral is hereby struck out from the list.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (4) of the Rules of Procedure, on 11 March 2014, unanimously:

DECIDES

- I. TO STRIKE OUT the Referral and to take no further steps in relation thereto;
- 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



Arta Rama-Hajrizi



President of the Constitutional Court



Prof. Dr. Enver Hasani