



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

Prishtina, 12 July 2012
Ref. No.: RK/275/12

RESOLUTION ON INADMISSIBILITY

In

Case No. 140/11

Applicant

Habib Ymeri

**Constitutional review of the Judgment of the Supreme Court of Kosovo
Rev. 383/2008, dated 10 June 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge

Applicant

1. The applicant is Mr. Habib Ymeri, residing in Gjilan.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. 383/2008, dated 10 June 2011 and served on the Applicant on 1 July 2011.

Subject matter

3. The Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 27 October 2011 claiming that his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") has been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 26 October, the Applicant submitted a Referral with the Court.
6. On 12 January 2012, the President, by Order No. GJR. 140/10, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President, by Order, No. KSH. 140/10, appointed the Review Panel consisting of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 24 January 2012, the Referral was communicated to the Supreme Court of Kosovo. So far, no reply has been received. On the same date a request to the Municipality Court Gjilan for the return receipt, in order to find out the exact date when the Applicant received the Judgment of the Supreme Court of Kosovo Rev. 383/2008.
8. On 8 February 2012 the Municipality Court of Gjilan sent the requested documents, which provide evidence that the Judgment of the Supreme Court of Kosovo was served to the Applicant on 1 July 2011.
9. On 11 July 2012, 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 in Administrative Procedure

10. In 2001 (the exact date not provided) the Applicant established employment relationship with the Municipality of Gjilan – Directorate of Urbanism, Reconstruction and Environment/Sector of Issuing Permissions, in the position of an Urbanist.
11. On 14 December 2004, the Director of the Sector of Issuing Permissions conducted and evaluation of performance of the Applicant.
12. In addition, the Chief Executive of Municipality, conducted another evaluation of performance, and as a consequence he decided not to renew the contract of employment with the Applicant, with the Decision 02/164, dated on 28 February 2005.
13. On 14 March 2005, the Applicant filed an appeal with the Appeal Commission of local authority, against the decision 02/164 for not renewing the employment contract.
14. On 13 June 2005 the Appeal Commission issued a decision, which rejected the complaints of the Applicant and upheld the decision of the Chief Executive for the termination of employment relationship.
15. On 9 April 2005 the Applicant filed an appeal with the Independent Oversight Board – Ministry of Public Services, alleging that there have been serious violations of the procedural provisions.

16. On 8 December 2006 the Independent Oversight Board (hereinafter: the "IOB") issued decision No. 02/66/2005, rejecting as unfounded the appeal of the Applicant and upheld the Decision 02/164, dated 28 February 2005.

Summary of the facts in Court Procedure

17. The Applicant being dissatisfied with the decision of the IOB, filed a lawsuit with the Municipality Court of Gjilan, requesting the annulment of the Decision 02/164 of the Municipality of Gjilan on non-renewal of the contract, and Decision No. 02/66/2005 of the IOB.
18. On 10 March 2008, the Municipality Court of Gjilan issued Judgment C. no. 562/07 which approved the Applicant's claims and annulled Decision 02/164 of the Municipality of Gjilan on non-renewal of the contract and Decision No. 02/66/2005 of the IOB, in the same time obliging the Municipality of Gjilan to return the Applicant in his previous working place.
19. The Municipality of Gjilan filed an appeal with the District Court of Gjilan, against Judgment C. no. 562/07 of the Municipality Court, requesting its annulment.
20. On 18 June 2008 the District Court issued Judgment AC. no. 172/08, which upheld the Judgment of the Municipality Court C. no. 562/07 and rejected the Municipality of Gjilan's appeal.
21. The Municipality of Gjilan filed a request for Revision with the Supreme Court of Kosovo, as an extraordinary legal remedy.
22. On 10 June 2011, the Supreme Court of Kosovo brought its Judgment Rev. no. 383/2008, which approved Municipality of Gjilan's claims and changed the judgments: C. no. 562/07 of the Municipality Court of Gjilan and AC. no. 172/08 of the District Court of Gjilan, stating that:

"The Supreme Court of Kosovo assesses that since the employment contract of the claimant has not been renewed, the employment relationship of the claimant, as a civil servant, has been terminated automatically pursuant to Article 32.1 (b) of the Administrative Instruction no. 2003/2 on the implementation of the Regulation 2001/36 on the Civil Servants of Kosovo"

Further, the Supreme Court of Kosovo gave the reasoning of changing the Judgments of the Courts of lower instances:

"The legal stance if the courts of lower instances that the assessment of the claimants; work by the Chief Executive of the respondent is not relevant, because the same is not claimant's manager nor supervisor of his work, according to the assessment of the Supreme Court of Kosovo is wrongful, since pursuant to Administrative Instruction no. CSAD MPS 2003/2 on the procedures of contracts, in the point 5a - "Non-renewal of the contracts" is foreseen that the Permanent Secretary/Chief Executive will review the evidences and will reach a final decision for termination of the contract, respectively its non-renewal"

Applicant's allegations

23. The Applicant complains that the Supreme Court through its Judgment Rev. no. 383/2008 has violated his right to work guaranteed under Article 49 of the

Constitution. He also complains about the length of procedure, claiming that the time that the Supreme Court of Kosovo took to decide in his case was unreasonable.

Preliminary assessment of admissibility of the Referral

24. Article 113.7 of the Constitution of the Republic of Kosovo provides the following:

“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”.

25. From the documentation submitted, it may be found that the Applicant has exhausted all legal remedies provided by law.

26. Paragraph 1 of Article 49 of the Law on the Constitutional Court provides the following:

“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced”.

27. The most recent decision related to this case is the decision of 10 June 2011, which was served to the Applicant on 1 July 2011. The Applicant filed the referral with the Constitutional Court on 27 October 2011, which means that he filed the referral before this Court in compliance with the deadline set forth by Article 49.

28. Even though, the Applicant has exhausted all legal remedies in order to realize his alleged right to work foreseen by the Constitution, he has not provided any evidence - relevant fact to support that the “administrative or judicial authorities have made any violation of her rights guaranteed with the Constitution”, (see Vanek v. Slovak Republic, ECtHR Decision on Admissibility of the case No. 53363/99 dated 31 May 2005).

29. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

30. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).

31. However, having examined the documents submitted by the Applicants, the Constitutional Court does not find any indication that the proceedings before Supreme Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 11 July 2012, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately

Judge Rapporteur

Ivan Čukalović



President of the Constitutiona Court

Prof. Dr. Enver Hasani

