



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

Prishtina, on 9 January 2018
Ref. no.: RK 1181/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI117/17

Applicant

Avdullah Osmani

**Constitutional review of Judgment ARJ – UZVP No. 46/ 2017 of the
Supreme Court of Kosovo of 3 August 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Avdullah Osmani from Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment ARJ – UZVP No. 46/ 2017 of the Supreme Court of Kosovo of 3 August 2017.

Subject matter

3. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to a Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 October 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 October 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 10 October 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 7 December 2017, 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 facts

9. The Applicant had established an employment relationship with the Primary School in Mitrovica in a job position of a technician.
10. On 12 May 2009, the school director rendered Decision 226-2/09, which suspended the Applicant from his job due to failure to perform his duties.
11. On 28 May 2009, the Applicant filed a complaint against Decision 226-2/09 with the Directorate for Education and the Appeals Commission in the Municipality of Mitrovica.
12. On 31 August 2009, the employment relationship of the Applicant was terminated upon the expiry of contract of employment.

13. Due to the administrative silence of the Directorate for Education and the Complaints Commission in the Municipality of Mitrovica, the Applicant filed a complaint with the Municipal Court in Mitrovica.
14. On 5 April 2013, the Municipal Court in Mitrovica rendered Decision C. No. 126/2012, declaring itself incompetent for the subject matter. By the same decision, the Court referred the Applicant to the Independent Oversight Board (hereinafter: the IOB) as a competent authority for the matter in question.
15. On 12 April 2013, the Applicant filed a complaint with the IOB due to administrative silence of the Directorate for Education and the Appeals Commission in the Municipality of Mitrovica regarding the complaint filed on 28 May 2009.
16. On 13 May 2013, the IOB rendered Decision 02/166/2013, which ordered the Directorate for Education and the Appeals Commission to respond to the Applicant within 15 (fifteen) days.
17. The Director of Administration of the Municipality of Mitrovica sent a response to the IOB regarding Decision 02/166/2013, which stated *inter alia* that: "the employment authority informs the IOB that it has rejected the Applicant's complaint due to the fact that it has no legal obligation towards the complainant, because his work contract is fulfilled at all points."
18. On 7 June 2013, the Applicant filed a new appeal with the IOB, with the same appealing allegations, along with a request for a reinstatement to work.
19. On 19 June 2013, the IOB issued Decision 02/238/2013, rejecting the Applicant's appeal as ungrounded.
20. On 12 July 2013, the Applicant filed a claim with the Municipal Court in Prishtina against Decision 02/238/2013 of IOB. In the claim, the Applicant requested the compensation of his unpaid personal income and reinstatement to work.
21. On 6 October 2016, the Municipal Court in Prishtina rendered Judgment A No. 421/14, which rejected the Applicant's statement of claim as ungrounded. The reasoning of the judgment, *inter alia*, states that:

"In order to assess the legality of the decision challenged by claim, the Court addressed UNMIK Administrative Direction No. 2003/2, for implementation of UNMIK Regulation on the Civil Service of Kosovo No. 2001/36, which stipulates that: „civil service employment terminates automatically“, pursuant to Article 35 (b), upon expiry of the civil servant's contract of employment. "

[...]

"...the court also notes that in the case files it is seen that the Claimant was imposed disciplinary measures where it was ascertained that there was a final warning for termination of the employment contract, whereas on 12.05.1998 he was imposed a disciplinary measure because of the violation,

of the work duties - official threat and abuse of official duty, and a disciplinary measure is imposed Suspension from the workplace with payment of personal income...”

22. The Applicant filed an appeal with the Court of Appeals against Judgment A no. 421/14 of the Basic Court.

23. On 6 April 2017, the Court of Appeals rendered Judgment A. A. No. 13/2017, which rejected the Applicant's appeal as ungrounded. The reasoning of the Judgment, *inter alia*, reads:

“According to the valid legal regulations, the Applicant had the status of a civil servant, and accordingly his employment contract was for a fix period of time. On 12.05.2009 he was imposed a disciplinary measure of suspension from his job position. In the meantime, his employment contract expired. “

24. The Applicant filed an appeal with the Supreme Court against Judgment A. A. No. 13/2017 of the Court of Appeals.

25. On 3 August 2017, the Supreme Court rendered Judgment ARJ - UZVP No. 46/2017, which rejected the Applicant's appeal as ungrounded. In the reasoning of the judgment it stated, *inter alia*, that:

“Since the claimant had the status of a civil servant, he had a fix-term contract from 01.09.2008 until 31.08.2009, which means that the employment relationship was terminated with the expiry of the employment contract, as provided in Article 35. 1 (b) AD No. 2003/2, for the implementation of UNMIK Regulation no. 2001/36. “

Applicant's allegations

26. The Applicant alleges that he worked for 25 years in the school, that he regularly performed his work duties, and that the school director and the others from the municipal administration wrote untruths about him. Because of these untruths, the competent authorities rendered decisions that are not in his favor.

27. Those decisions, according to the Applicant's allegations, violate his rights and freedoms guaranteed by Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

28. The Applicant requests the Court to “*declare invalid all decisions of the courts, decisions of IOB, as well as all other decisions that have been brought to his detriment.*”

Admissibility of Referral

29. The Court will first examine whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and as further specified in the Rules of Procedure.

30. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

7. 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.”

31. In the present case, the Court notes that the Applicant in his Referral clarified what constitutionally guaranteed rights and freedoms were violated by the decisions of the regular courts, as prescribed by Article 48 of the Law [Accuracy of the Referral], which states:

“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 public authority is subject to challenge.”

32. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

“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.”

33. The Court notes that the Applicant is an authorized party; the Referral was submitted in accordance with the deadlines prescribed in Article 49 of the Law, and the Applicant has exhausted all legal remedies.

34. The Court further refers to Rule 36 (1) d) and (2) b) of the Rules of Procedure, which foresees:

“(1) The Court may consider a referral if:

[...]

d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”

35. The Court notes that in essence the Applicant complains about violation of constitutional rights and freedoms because *all authorities and institutions have rendered decisions that are not in his favor.*

36. As such, the Court notes that, primarily, the Applicant is alleging a violation of his right to a fair trial, as guaranteed by Article 31 of the Constitution. In this respect, the Court, first of all, reiterates that the European Court on Human Rights (hereinafter: the ECtHR) has established that *“it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain [GC], No. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).”*
37. The Court also reiterates that the complete determination of factual situation is within the full jurisdiction of the regular courts and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore, it cannot act as *“fourth instance court”* (see ECtHR case *Akdivar v. Turkey*, No. 21893/93, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*, Constitutional Court: case KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
38. In that regard, the Court notes that the Basic Court in Judgment A No. 421/14 found that, according to the applicable legal regulations, the Applicant had one-year employment contract for the period from 1 September 2008 until 31 August. 2009. The Court also notes that despite the fact that he was imposed a disciplinary measure of suspension from his job, he regularly received personal income from the employer until the expiry of the employment contract.
39. Furthermore, the Court notes that the Court of Appeals dealt with the same appealing allegations, which, in addition to reviewing the merits of the Judgment of the Basic Court, also dealt with the review of the legality of the IOB decisions. In this regard, the Court of Appeals concluded that *“the judgment of the first instance court and the final decision of the IOB are clear, lawful and contain sufficient reasons for the decisive facts.”*
40. In addition, the Court does not find Judgment ARJ - UZVP No. 46/2017 of the Supreme Court as arbitrary, ungrounded or discriminatory, because it is clear, reasoned in detail, legally grounded on the applicable legal regulations, namely on Article 35 (1) (b) of UNMIK Administrative Direction No. 2003/2, which regulates the employment relationship and the status of an employee in the public service, which was applicable in that period of time.
41. As such the Court finds that the regular courts have dealt in detail with the examination of the merits of both, the allegations from the claim and the Applicant's appealing allegations, concerning the termination of his employment relationship, as well as the payment of unpaid personal income.
42. In light of the above, the Court does not find any arbitrariness in the application of the substantive law in the reasoning of the challenged decisions. It also cannot find elements that would indicate irregularity, arbitrariness or discrimination in rendering challenged decisions to the detriment of the Applicant.
43. In these circumstances, the Court considers that nothing in the case presented by the Applicant indicates that the regular court proceedings were unfair or arbitrary such that the Constitutional Court to be satisfied that the very essence

of the right to fair and impartial trial was violated, or that that the Applicant has been deprived of any procedural guarantees which could lead to a violation of that right under Article 31 of the Constitution or Article 6 of the ECHR.

44. Regarding Applicant's allegations for violation of other rights and freedoms guaranteed by the Constitution (namely articles 21, 23, 24, and 49) the Court finds these allegations as ungrounded, because the Applicant did not provide any valid argument or evidence to support and justify those alleged violations.
45. In fact, the Court observes that the Applicant invokes Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court considers that the challenged Judgment of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's claim that justifies a conclusion that his constitutional right to work has been violated.
46. The Court emphasizes that it is the Applicant's obligation to substantiate his constitutional allegations, and submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR. That consideration is in conformity with the jurisprudence of the Court (See Constitutional Court cases No. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylá*, 5 December 2013).
47. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and it is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) d) and (2) b) of the Rules of Procedure, in its session held on 7 December 2017, unanimously

DECIDES

- I. TO DECLARE the Referral 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. TO DECLARE this Decision effective immediately

Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi