



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

Prishtina, 23 April 2019
Ref. no.:RK 1349/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI30/19

Applicant

Isni Kryeziu

Request for constitutional review of Regulation (GRK) No. 14/2018 for Internal Organization and Systematization of Working Places in the Ministry of Education, Science and Technology of 26 September 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Applicant is Isni Kryeziu, residing in the village Bubavec, municipality of Malisheva (hereinafter: the Applicant).

Challenged act

2. The Applicant challenges the Regulation (GRK) No. 14/2018 for Internal Organization and Systematization of Working Places in the Ministry of Education, Science and Technology of 26 September 2018 (hereinafter: Regulation No. 14/2018)

Subject matter

3. The subject matter is the constitutional review of the challenged act, which allegedly violates the Applicant's rights guaranteed by Articles 24 [Equality Before the Law], 32 [Right to Legal Remedies], 49 [Right to Work and Exercise Profession] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely, the postponement of the implementation of Regulation No. 14/2018 until a decision is rendered by the Court.

Legal basis

5. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 27 [Interim Measures] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 21 February 2019, the Applicant submitted the Referral to the Court.
7. On 4 March 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 8 March 2019, the Court notified the Applicant and the Ministry of Education, Science and Technology (hereinafter: MEST) about the registration of the Referral.
9. On 3 April 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. The Applicant since 2007 has exercised the position of the Director of the Legal Department at MEST.
11. On 11 September 2018, the Government of the Republic of Kosovo (hereinafter: the Government), by Decision No. 1/64, approved Regulation No. 14/2018 on Internal Organization and Systematization of Working Places in MEST, which was signed by the Prime Minister of the Republic of Kosovo on 26 September 2018, and was published in the Official Gazette on 28 September 2018.
12. On 23 October 2018, the Applicant and several other persons filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court) against the Government of Kosovo –MEST, requesting the repeal of Regulation no. 14/2018.
13. On 26 October 2018, the Basic Court rendered Decision [A. No. 2526/18] which rejected the Applicant's and some other persons' claim as inadmissible on the grounds that *"the administrative conflict cannot be developed against the acts containing a general obligation issued by the administrative bodies while with the implementation of the challenged act we still have no violation of legitimate rights of the parties"*.
14. On an unspecified date, against the Judgment [A. No. 2526/18] of the Basic Court, the Applicant and several other persons filed a claim with the Court of Appeals.
15. On 21 November 2018, the Court of Appeals, by Decision [AA. No. 544/2018] rejected as ungrounded the appeal of the Applicant and of some other persons and upheld the Decision of the Basic Court, reasoning that the claimants did not provide at any stage of the proceedings evidence that they acted on legal grounds according to the provisions of the Law on Administrative Conflicts for the initiation of the court proceedings of the administrative conflict, namely that they exhausted legal remedies as provided by the provisions of the Law on Administrative Procedure in the administrative procedure, therefore, the Basic Court rightly dismissed the claim as inadmissible, as the claimant does not challenge the legality of any final administrative decision.

Applicant's allegations

16. The Applicant alleges that Regulation No. 14/2018 violates his rights guaranteed by Articles 24 [Equality Before the Law], 32 [Right to Legal Remedies], 49 [Right to Work and Exercise Profession] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.
17. The Applicant complains that Regulation No. 14/2008, is in contradiction with the legislation in force, namely, the Law on the Civil Service, the Law on the State Administration, Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, Regulation No. 13/2013 on Government Legal Service, Regulation No. 05/2016 on Minimum Standards

for Public Consultation Process, citing also concrete provisions of these laws and sub-legal acts.

18. The Applicant emphasizes that in violation of the constitutional and legal provisions mentioned above, through Regulation No. 14/2018, the Legal Department in MEST is terminated and several other departments are merged, and on this occasion the Applicant's rights from employment relationship, as a Director of the Legal Department at MEST, have been violated.
19. He also alleges that in the *"Catalog of Working Places, approved by the Government in January 2015 [...] foresees the organization of the legal department, therefore, without changing the Catalog, the organization of the legal department and of other departments cannot be changed"*.
20. In addition, the Applicant states that the Law on the Civil Service defines the manner of establishing an employment relationship, and according to this Law the Applicant was appointed for the position of Director and it is not possible that his working place is terminated and merged, or changed without any legal basis.
21. The Applicant also requests the Court to impose an interim measure, namely the postponement of the implementation of Regulation No. 14/2018, until a decision is rendered by the Court.
22. Finally, the Applicant requests the Court to approve the Referral as grounded and partially annul Regulation No. 14/2018, namely regarding the incorporation of the Legal Department as one of the divisions within the Department for European Integration and Policy Coordination.

Admissibility of the Referral

23. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
24. The Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties"*.
25. In addition, the Court refers to paragraphs 2 (1) and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate the following:

"2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court::

(1) the question of the compatibility [...] with the Constitution of regulations of the Government";

[...]

(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”.*

26. The Court also takes into account Rule 39 (1) (a) [Admissibility Criteria] of the Rules of Procedure, which specifies:

Rule 39
[Admissibility Criteria]

“1. The Court may consider a referral as admissible if:

(a) *the referral is filed by an authorized party;*
[...]

27. The Court notes that the Applicant in his Referral does not challenge the court decisions that have been taken in relation to his case, where he challenged the legality of Regulation No. 14/2018. Before the Court, he challenges, *in abstractio*, the constitutionality of Regulation No. 14/2018, claiming that this regulation is in violation of the Constitution, the Law on the State Administration and the Law on the Civil Service, and in violation of the sub-legal of the Government, and therefore, it jeopardizes his working place.
28. However, the Court recalls that the Constitution of Kosovo does not foresee the possibility for an individual to challenge the compatibility of the regulations of the Government. This competence is foreseen by the Constitution for the authorized parties such as the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and the Ombudsperson, who may challenge the regulations of the Government under Article 113, paragraph 2 (1) of the Constitution.
29. In addition, the Constitution of the Republic of Kosovo does not provide for the institution of an *actio popularis*, which would allow any individual who attempts to protect the public interest and the constitutional order, to address the Constitutional Court with questions and with certain requests, alluding to the fact that certain legal provisions or public acts appear to contravene the Constitution (see, *mutatis mutandis*, ECtHR case, *Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, No. 47848/08, Judgment of 17 July 2014, paragraph 101).
30. Individuals are authorized to challenge only individual acts of public authorities that violate their individual rights and only after the exhaustion of all legal remedies provided for in paragraph 7 of Article 113 of the Constitution (see, *mutatis mutandis*, the case of the Constitutional Court, KI102/17, Applicant: *Meleq Imeri*, Resolution on Inadmissibility, of 10 January 2018, para. 20).

31. Therefore, in the circumstances in which the referral was filed by an unauthorized party, the Court cannot assess the merits of the case and consequently, in the present case, the Court does not assess the Applicant's allegations whether the provisions of Regulation No. 14/2018 are or are not in compliance with the Constitution.
32. Therefore, from the reasons above, the Court finds that the Referral was not submitted by an authorized party in a lawful manner as provided by Article 113 paragraphs 1 and 7 of the Constitution, Article 47 of the Law, Rule 39 (1) (a) of the Rules of Procedure, and as such is inadmissible.

Request for interim measure

33. The Court recalls that the Applicant also requests the Court to render a decision on the imposition of interim measure, namely the postponement of the implementation of Regulation No. 14/2018 until the Court renders a decision on the case.
34. The Court has just concluded that the Applicant's Referral does not meet the procedural admissibility requirements.
35. Therefore, pursuant to Article 27, paragraph 1 of the Law and in accordance with Rule 57, paragraph 1 of the Rules of Procedure, the Applicant's request for interim measure is to be rejected, because it can no longer be subject to review, as long as the Referral is declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraphs 1 and 7 of the Constitution, Articles 27 and 47 of the Law, and Rule 39 (1) (a) of the Rules of Procedure, on 3 April 2019, unanimously

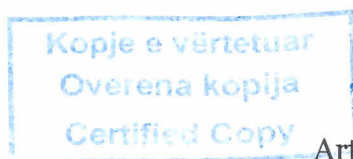
DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban



Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.