



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

Prishtina, 21 October 2019
Ref. No.:RK 1450/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI95/19

Applicant

Ruzhdi Bejta

Constitutional review of Judgment Rev. no.54/2019 of the Supreme Court of Kosovo, of 11 March 2019

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 Referral was filed by Ruzhdi Bejta residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 54/2019] of 11 March 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which as alleged by the Applicant, has violated his rights guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law], 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 the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] of the Law No.03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] 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 12 June 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On the same day, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
7. On 9 July 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 10 July 2019, the Applicant submitted to the Court several forms of interview commission, as well as several submissions which the Applicant had addressed to the Basic Court.
9. On 8 October 2019, 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

10. On 18 October 2012, the Directorate of Education in the Municipality of Prishtina announced a vacancy for the position of Director and Deputy Principal in several primary and secondary schools, including the Secondary Medical School "Dr. Ali Sokoli" in Prishtina.

11. The Applicant had applied for the position of Director of the Secondary Medical School “Dr. Ali Sokoli”.
12. On 8 November 2012, the Mayor of Prishtina by Decision [Ref. no. 020-40894] appointed the Interview Committee. The Committee had invited to the interview five candidates. Of these five candidates, the Interview Committee had compiled a short list with three names of the candidates who had scored the most points. The list in question was sent to the Municipality of Prishtina with the recommendation that the procedure for the selection of the director be finalized by the decision of the Mayor of Prishtina. By decision of the Mayor, the first candidate on the list with the most points, respectively I.R. was selected for the position of the director of the Secondary Medical School “Dr. Ali Sokoli”.
13. On 25 February 2013, the Applicant dissatisfied with the decision on selection of I.R. as a director, submitted a complaint to the Complaints Commission of the Ministry of Education Science and Technology (hereinafter: MEST Complaints Commission).
14. On 18 March 2013, the MEST Complaints Commission declared itself incompetent to decide on the Applicant's complaint because, according to them, the employment of teaching staff and the selection of school directors is a competence of the municipalities.
15. The Applicant filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court), requesting from it to annul the Decision of the Municipality of Prishtina on the selection of candidate I.R. as director, and oblige the Municipality of Prishtina to make the selection of the director among the candidates presented. He also claimed compensation for unrealised salaries for the position of director. The Applicant had justified his claim by the fact that, according to the allegation in the claim, the person in question who had been selected has not been qualified for the final part of the competition for the position of director. The Applicant considered that he should have been the winner of the competition in question and not the person who had already been selected for that position.
16. On 8 December 2014, the Basic Court, by Judgment [C.no.1388/14], rejected as unfounded the claim of the Applicant. As a reason for rejecting the statement of claim, the Basic Court, inter alia, stated that the Applicant had based his *claim “on assumptions and allegations not on the facts”* and pursuant to Article 7 of Law No. 03 /L-006 on Contested Procedure (hereinafter: LCP) *“Parties shall present all the facts on which they base their claim and propose evidence which establishes such facts [...]”* - the Applicant's claim was unfounded. In this regard, the Basic Court emphasized that the Applicant had not provided evidence to support the merits of his statement of claim, whereas the Respondent, respectively the Municipality of Prishtina, argued that the procedure for selection of a candidate for the position of director was conducted on the basis of a regular process. Based on a suchlike factual situation, the Basic Court held that the Applicant's claim should be rejected as unfounded.

17. The Applicant filed an appeal with the Court of Appeals against the aforementioned judgment of the Basic Court, because of the erroneous application of substantive and procedural law and erroneous and incomplete determination of factual situation.
18. On 10 September 2018, the Court of Appeals, by Judgment [AC.no.2904/15], rejected the Applicant's appeal as unfounded and confirmed the Judgment [C.no.1388 / 14] of the Basic Court of 8 December 2014. The Court of Appeals justified the appeal as unfounded given that, according to it, the Basic Court had rejected the Applicant's statement of claim as unfounded in a correct manner and without substantial violations of the provisions of the contested procedure. Further, the Court of Appeals considered that the Basic Court had correctly and completely administered the evidence and facts and correctly applied the substantive law.
19. The Applicant submitted a request for revision to the Supreme Court against the aforementioned judgment of the Court of Appeals, alleging violations of the provisions of the contested procedure and erroneous application of the substantive law.
20. On 11 March 2019, the Supreme Court by Judgment [Rev.no.54/2019] rejected the Applicant's request for revision as unfounded, on the ground that the allegations in the revision which concern the alleged violations of the provisions of contested procedure and erroneous application of substantive law do not exist. The Supreme Court held that according to Article 222 of the LCP the revision is unfounded.
21. More precisely, the Supreme Court in its Judgment stated as follows:

“Given a suchlike state of facts the Supreme Court of Kosovo, has found that the second instance court has correctly applied the provisions of the contested procedure and the substantive law when rejecting the claimant’s appeal. The challenged judgment does not contain substantial violations of the provisions of the contested procedure which this court should consider ex officio.

The claimant in the first instance court procedure did not provide evidence whereby he would have proved the credibility of the allegations for violation of substantive and procedural law on the occasion of his non-selection. The failure of the claimant to act within the meaning of Article 319.1 of the LCP cannot be attributed as a failure to the court.

Revision claims concerning the alleged violations of the provisions of the contested procedure which refer to the falsification of the minutes of the commission in charge of interviewing the candidates, are assessed as inadmissible by this court since the claimant failed to present facts supporting his allegations and did not propose evidence proving these facts.”

Applicant's allegations

22. The Applicant alleges that the Supreme Court, by rejecting his request for revision as unfounded, violated his rights protected by Articles 23, 24 and 31 of the Constitution and the right guaranteed by Article 6 of the ECHR.
23. According to the Applicant, the provisions of the aforementioned Articles “represent constitutional guarantees for the protection of human dignity, freedom and equality and are fundamental values of a democratic society based on the rule of law.”
24. Finally, the Applicant addresses the following request to Court:

“[...] request from the Constitutional Court to identify the violations referred to in the previous Judgments and approve my request, as I consider that the highest courts in the country have rendered decisions in violation of the law.”

Assessment of the Applicant's Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

Article 113 of the Constitution [Jurisdiction and Authorized Parties]

*“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.”

27. The Court also refers to Article 47 [Individual Requests] of the Law, which provides:

Article 47 [Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

28. Initially, as regards the fulfillment of these criteria, the Court finds that the Applicant is an authorized party challenging an act of a public authority, namely the Judgment [Rev.no.54/2019] of the Supreme Court of 11 March 2019, after having exhausted all the legal remedies provided by the law. Consequently, the Court finds that the Applicant has fulfilled the criteria provided by paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 of the Law.
29. However, the Court should also refer to the other relevant admissibility criteria set out in the Law and the Rules of Procedure, respectively, Article 48 [Accuracy of the Referral] of the Law and Rule 39 (1) (d) of the Rules of Procedure, which provide:

Article 48
[Accuracy of the Referral]

“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.”

Rule 39
[Admissibility Criteria]

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

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

30. As regards the fulfillment of these criteria, the Court firstly emphasizes that Article 48 of the Law is further reflected and concretized by Rule 39 (1) (d) of the Rules of Procedure and as such - these two regulations - must be read together (see, as a general principle for application of these provisions, the Resolution on Inadmissibility KI02/18, Applicant *Government of the Republic of Kosovo* [Ministry of Environment and Spatial Planning], Resolution on Inadmissibility of 20 June 2019, paragraph 36).
31. In this respect, the Court notes that Article 48 of the Law contains a total of two requirements. The first consists of (i) the applicants' obligation and their requirement to clarify precisely what rights and freedoms they allege to have been violated by the public authority - whose decision they are challenging; and the second consists of (ii) the obligation of the applicants and their requirement to specify the concrete act of public authority they wish to challenge before the Constitutional Court. Both of these criteria of Article 48 of the Law, and in particular the first criterion of this Article, are also reflected in Rule 39 (1) (d) of the Rules of Procedure requiring that a Referral filed with the Court must accurately clarify and adequately present facts and allegations for a violation of constitutional rights or provisions.

32. As to these admissibility criteria established by the Law and further specified in the Rules of Procedure, the Court notes that despite the fact that the Applicant has clearly specified that he challenges the Judgment [Rev. no. 54/2019] of the Supreme Court of 11 March 2019, and the fact that he mentioned the provisions allegedly violated, respectively Articles 23, 24 and 31 of the Constitution and Article 6 of the ECHR, he failed to fulfil his obligation to “adequately present [...] allegations for violation of constitutional rights or provisions” by the public authority, namely the Supreme Court in the present case. The Applicant has not elaborated on any justification of his allegations. He merely has referred to the aforementioned articles of the Constitution and the ECHR by failing to explain in any way how those rights provided for by these articles have been violated by the Supreme Court or other regular courts that have decided on his statement of claim.
33. In light of these facts, the Court notes that the Applicant has failed to accurately clarify his allegations for a violation of the rights and freedoms guaranteed by the Constitution and has consequently failed to meet the requirements stipulated by Article 48 of the Law in conjunction to Rule 39 (1) (d) of the Rules of Procedure (see, the Constitutional Court case KI02/18, cited above, paragraphs 40-41).
34. Also at the ECtHR level, in cases where the applicants only mention articles of the ECHR but do not clarify and precisely specify their allegations, such applications are declared inadmissible due to the lack of justification on allegations for violation of the ECHR. The requirement to submit a summary of the facts and alleged violations of the ECHR with relevant arguments is required by Rule 47 [Content of an individual application] of the Rules of Procedure of the ECtHR stemming from Article 35 [Admissibility criteria] of the ECHR. Failure to comply with the requirements stipulated in these regulatory provisions causes the applications not to be considered on merit by the ECtHR (see in this respect, the ECtHR cases in which the Applicants have not substantiated their allegations for violations of ECHR: *Yekaterina Afanasyevna Trofimchuk v. Ukraine*, Application No.4241/03, Decision of 31 May 2005; and, *Michel Baillard v. France*, Application No.6032/04, Decision of 25 September 2008).
35. Therefore, the Court finds that the Applicant's Referral does not clearly specify and does not adequately present the allegations for a violation of his rights and as such the Referral must be rejected due to the failure to meet the admissibility requirements provided in Article 48 of the Law in conjunction with Rule 39 (1) (d) of the Rules of Procedure.
36. Consequently, the Court concludes that the Applicant's Referral must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution, Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, on 8 October 2019, unanimously

DECIDES

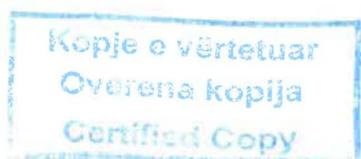
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Remzije Istrefi-Peci

Arta Rama-Hajrizi



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