



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

Prishtina, on 17 July 2020
Ref. no.: RK 1580/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI77/19

Applicant

Musa Islami

Constitutional review of the Judgment AA.no.99/2018 of the Court of Appeals, of 12 February 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 submitted by Musa Islami, from the village of Dyz, Municipality of Podujevë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment AA.no.99/2018 of the Court of Appeals of Kosovo, of 12 February 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which allegedly has violated the rights of the Applicant, guaranteed by Articles 3 [Equality before the Law], 7 [Values], 28 [Prohibition of Slavery and Forced Labor] and 54 [Judicial Protection of Rights] 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, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03 / L-121 (hereinafter: the Law), as well as Rule 32 [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 14 May 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 17 May 2019, the President of the Court appointed Judge Safet Hoxha, as Judge Reporter and the Review Panel, composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Ljatifi and Radomir Laban.
7. On 17 June 2019, the Court notified the Applicant about the registration of the Referral. On the same day, the Court notified the Court of Appeals of Kosovo about the registration of the Referral.
8. On 10 June 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 20 February 2014, the Secretary-General of the Ministry of Finance, by Decision No. 09/14, appointed the Applicant as the Acting Head of the Central Harmonization Division for Financial Management and Control, from the position of official of the same Division.
10. On the basis of the case file it results that even after this decision, the Applicant's salary was not harmonized with the other Division Heads, by the Ministry of Finance.

11. On 28 October 2014 the Applicant submitted a request to the Dispute and Complaints Resolution Commission at the Ministry of Finance seeking a *“salary levelling and treatment”*.
12. On 3 November 2014, the Dispute and Complaints Resolution Commission at the Ministry of Finance by Decision [No.-KA-2014] rejected the Applicant's request on the grounds that it *“deals only with the review of complaints and not the requests hence the commission does not have the competence to decide on the levelling of salaries and treatment”*.
13. On 19 November 2014 the Applicant filed a complaint with the Independent Oversight Board for the Civil Service of the Republic of Kosovo (hereinafter: the IOBCSK) requesting that the Ministry of Finance treat him with the same salary as the other division head, within the same Department.
14. On 19 January 2015 the IOBCSK, by its Decision [A/02/589/2014], dismissed as inadmissible the Applicant's complaint on the grounds that it had been filed after the prescribed legal deadline.
15. On 20 February 2015, the Applicant filed a claim with the Basic Court in Prishtina, against the decision of the IOBCSK [A/02/589/2014], of 19 January 2015, alleging an incorrect application of the legal provisions and erroneous determination of the factual situation.
16. On 10 January 2018, the Basic Court in Prishtina, by Judgment [A.no. 328/15] rejected the Applicant's claim. In its reasoning, the Basic Court in Prishtina considered the decision of the IOBCSK [A/02/589/2014] of 19 January 2015 to be fair and lawful, adding that the substantive law has been correctly applied. In the reasoning, among other things, it is stated that *“since the deadline for complaining starts to run from the date when the complainant receives notice that his rights have been violated and that for the complainant this fact is the first salary transferred to his account on 01.04.2014, after receiving the decision on his appointment to the position of acting head, dated 20.02.2014, whilst the complainant has submitted his complaint to the employer on 28.08.2014, on the basis of this determined factual situation it is implied that his request for compensation of funds due to the change of the salary coefficient for the position assigned to him by the employer has been submitted out of any legal deadline. [...]”*.
17. On 6 February 2018, the Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina [A.no.328/15], of 10 January 2018, alleging erroneous determination of the factual situation and violation of the contested procedure.
18. On 12 February 2019, the Court of Appeals by Judgment [AA.no.99/2018] rejected as unfounded the Applicant's appeal considering the Judgment of the Basic Court in Prishtina [A.nr. 328/15] as regular and fully based on the law. As regards the claim for erroneous determination of the factual situation, this Court considers that the court of first instance has correctly confirmed the factual situation, emphasizing that *“the presented evidence have no such*

influence as to have a different decision rendered in this administrative legal matter.”

Applicant’s allegations

19. The Court recalls that the Applicant alleged that the challenged decision violated his rights, guaranteed by Articles 3 [Equality before the Law], 7 [Values], 28 [Prohibition of Slavery and Forced Labor] and 54 [Judicial Protection of Rights] of the Constitution.
20. The Applicant alleges that *“if I have lost my right to appeal for one month I have performed this function for 3 years without interruption until the date of the regular vacancy announcement, which means I have the right to receive compensation for 41 months”*.
21. The Applicant in essence claims that he has not been treated equally because the Ministry of Finance has not levelled his salary, even after he had been appointed as the Acting Head of the Central Harmonization Division for Financial Management and Control. The Applicant has been compensated with a salary at a lower coefficient than the heads of the other Division within the same Department.
22. The Applicant requests from the Court to annul the challenged decision and other decisions that preceded the latter, as well as to be compensated for the period of 41 months from the time when he was appointed to the above position.

Admissibility of the Referral

23. 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.
24. 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.”

25. 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”

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”.

Article 49
[Deadlines]

“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...”

26. As regards the fulfillment of these criteria, the Court finds that the Applicant is an authorized party challenging an act of a public authority, after having exhausted all the legal remedies provided by the law. The Applicant has also specified the rights and freedoms which he claims to have been violated, in accordance with the requirements of Article 48 of the Law, and has submitted the Referral within the deadline stipulated under Article 49 of the Law.
27. However, the Court must further assess whether the criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure have been met. It stipulates that:

(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.

28. The Court recalls that the Applicant alleges violations of the rights guaranteed by Articles 3 [Equality before the Law], 7 [Values], 28 [Prohibition of Slavery and Forced Labor] and 54 [Judicial Protection of Rights] of Constitution.
29. The Court emphasizes that the claims of the Applicant are, in essence, related to the interpretation by the regular courts of the respective provisions of substantive law as well as the erroneous determination of the factual situation.
30. According to the Applicant, these rights have been violated because he has not been treated equally by his employer, the Ministry of Finance, which even after

the Applicant has been appointed the Acting Head of the Central Harmonization Division for Financial Management and Control, did not level the Applicant's salary, with the salary of the head in the other Division within the same Department. The Applicant continued to receive the same salary which he had received as an official of the Ministry of Finance, before being appointed as the Acting Head.

31. The Court notes that the same allegations were made by the Applicant also before the regular courts.
32. As regards the Applicant's allegation for the violation of the rights protected by the Constitution, the Court emphasizes that the Applicant built his case on the grounds of legality, respectively on the erroneous determination of factual situation and erroneous interpretation of laws by the regular courts. The Court recalls that these allegations relate to the domain of legality and as such do not fall within the jurisdiction of the Court, and therefore, in principle, cannot be considered by the Court (see, inter alia, the case of the Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35).
33. In this respect, the Court emphasizes that it is not its duty to deal with the errors of law that have allegedly been committed by the regular courts (legality), unless and in so far as they may have infringed fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a court of fourth instance, which would result in exceeding the limits imposed on its jurisdiction. In accordance with the case law of the ECtHR and with its already consolidated case law, the Court reiterates that it is the role of regular courts to interpret and apply the pertinent rules of procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in a certain way rather than in another (see the ECtHR case No. 30544/96, *García Ruiz v. Spain*, of 21 January 1999, para.28 and see also the case of the Court KI70/11, Applicant *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
34. This position has been consistently maintained by the Court, based on the case law of the ECtHR, which clearly states that it is not the duty of this Court to review the conclusions of the regular courts regarding the factual situation and the application of substantive law. (see, the ECtHR case, *Pronina v. Russia*, Application no. 65167/01, Decision of Inadmissibility of 30 June 2005).
35. In the present case, the Court notes that the Court of Appeals has provided clear and sufficient reasons for its conclusions and findings. The Court notes that the Court of Appeals in its judgment had responded to all Applicant's allegations.
36. In this regard, the Court refers to the Judgment [AA.no.99/2018] of the Court of Appeals which in its reasoning stated that the Judgment A.no.328/15 of the Basic Court, of 10 January 2018, does not contain substantial violations of the provisions of the Law on Administrative Conflicts. Further, in respect of the Applicant's allegation that the factual situation was erroneously determined,

the Court of Appeals in its Judgment emphasized that the factual situation was correctly determined by having relied on sufficient evidence which prove that the Applicant's allegations were unfounded and that the Applicant with no evidence has not substantiated his allegations. Further, as regards the allegation of the Applicant, the Court of Appeals stated that "the claimant has filed a request with the Ministry of Finance on 28.10.2014, requesting that the Ministry treat him with the same salary as the head of the other division in this department. The claimant's deadline has started to run out from the moment when he received the salary in his bank account, respectively from 01.04.2014, while he has submitted on 28.08.2014, namely out of the deadline provided by the law, whilst Article 8 para. 2 of Regulation No. 05/2011 on Dispute Resolution and Complaints Procedures which stipulates that *"The complaint must be submitted within thirty (30) days from the moment when the civil servant considers that his rights from the employment relationship have been violated [...]"*.

37. In light of this, the Court further considers that the Applicant failed to prove that the proceedings before the regular courts have been unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated as a result of erroneous interpretation of the procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality (see the case of the Court KI63 / 16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, paragraph 44 and see also the case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility, of 15 November 2016, paragraph 62).
38. The Court emphasizes that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts or only the mention of the articles of the Constitution is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, the case of the Court KI136 / 14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).
39. Consequently, the Court considers that the Applicant has not substantiated the allegations that the respective proceedings have in any way been unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution.
40. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 10 June 2020, 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

Safet Hoxha

Arta Rama-Hajrizi



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