



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

Prishtina, 23 July 2015
Ref. no.: RK 809/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI04/15

Applicant

Elvira Reçica

**Constitutional Review of the Judgment Rev. No. 264/14 of the
Supreme Court, of 4 November 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mrs. Elvira Reçica from village Llugaxhi, Municipality of Lipjan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 264/14 of the Supreme Court of 4 November 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court. The Applicant considers that she was denied the right to administrative proceedings and the right to work in the proceedings before the regular courts. Thus, Articles 4, 24 and 34 of the Constitution have been violated.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 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 January 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 9 February 2015 by Decision GJR. KI04/15 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date by Decision KSH. KI04/15 the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 25 February 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 26 June 2015, by Decision GJR.KI04/15 the President of the Court appointed Judge Arta Rama-Hajrizi, as member of the Review Panel, replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.
9. On 2 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. The Applicant during the period from 2001 to 2006 was employed in capacity of a teacher of history in the primary school „Emin Duraku“ in the village Banulla, Municipality of Lipjan.
11. On 18 July 2006 the Municipality of Lipjan published the vacancy announcement in the daily newspaper „Zeri“ for three teachers of English

language for 11 classes, one physical education teacher and a teacher of history for 10 classes.

12. The Municipal Directorate of Education (hereinafter: MDE) in the vacancy for the position of a history teacher selected a third person, who also met the requirements of the job vacancy.
13. At the same time, the MDE selected the Applicant for the English language teacher and concluded with her a new employment contract for a time period from 1 September 2006 to 31 August 2007.
14. For such a decision on the selection of the MDE candidate, the Applicant filed an appeal with the Inspection of Education in the Ministry of Education, Science and Technology (hereinafter: MEST).
15. On 8 September 2006 the Inspector of Education of MEST rendered Decision No. 76/2006 by which it was ordered that the Applicant to be assigned in the working position of a history teacher with 14 classes and with the additional classes of English language for the third grade of the primary school „Emin Duraku“ in Banulla.
16. On 30 September 2006 the Inspector of Education of MEST rendered Conclusion No. 108/2006 which obliged the Director of MDE in the Municipality of Lipjan to execute Decision No. 76/2006. Otherwise, the proposal for execution will be submitted to the Municipal Court in Lipjan.
17. On 10 November 2006 the Chief Inspector of Education of MEST rendered a conclusion on approval of execution No. 274/02-5 by which he concluded that Decision No. 76/2006 of 8 September 2006 and Conclusion No. 108/2006 of 30 September 2006 are final and instructed the Applicant *"... to address the Municipal Court in Lipjan within 8 days of receipt of this conclusion for the execution of the decision in terms of its enacting clause."*
18. On 12 December 2006 the Applicant filed a proposal with the Municipal Court in Lipjan for execution of MEST Decision No. 76/2006 of 8 September 2006 and of MEST Conclusion No. 108/2006 of 30 September 2006.
19. On 2 March 2007 the Municipal Court in Lipjan interrupted the execution procedure and referred the Applicant to exhaust all remedies in administrative proceedings before the Independent Oversight Board of Kosovo (hereinafter: the IOBK).
20. On 15 August 2007 the IOBK by Decision No. 1685/2007 rejected the Applicant's appeal with the reasoning that the employment authority acted based on the employment contract, fulfilling its contractual obligations to her, because her employment contract was valid until 31 August 2007.
21. On 16 October 2007 the Municipal Court in Lipjan by Decision C. no. 522/06 rejected the Applicant's claim with the reasoning that this dispute was adjudicated by a final decision in the administrative procedure of IOBK No. 1685/2007 of 15 August 2007.

22. The Applicant filed an appeal with the District Court in Prishtina against the Decision of the Municipal Court in Lipjan.
23. On 29 April 2009 the District Court in Prishtina by Decision Ac. No. 394/2008 annulled Decision C. No. 522/06 of the Municipal Court in Lipjan of 16 October 2007 with the conclusion that the reasoning is unclear and remanded the case for retrial to the Municipal Court in Lipjan.
24. On 8 December 2009 the Municipal Court in Lipjan by Judgment C. No. 152/09 rejected as ungrounded the Applicant's statement of claim by which she requested to be assigned as a teacher of history with 14 classes of history and additional English classes with the reasoning that „...it is the right of the employment authority to decide which candidates will be selected with the same qualification“.
25. On 25 January 2010 the Applicant filed an appeal with the Court of Appeal in Prishtina against the Judgment of the Municipal Court in Lipjan.
26. On 16 June 2014 the Court of Appeal in Prishtina by Judgment Ac. No. 1545/2012 rejected the appeal as ungrounded and upheld Judgment C. No. 152/09 of the Municipal Court in Lipjan of 8 December 2009.
27. The Applicant filed a revision with the Supreme Court of Kosovo against Judgment Ac. No. 1545/2012 of the Court of Appeal in Prishtina of 16 June 2014.
28. On 4 November 2014 the Supreme Court of Kosovo by Judgment Rev. No. 264/2014 rejected the Applicant's request for revision as ungrounded with the following reasoning:

“... the Supreme Court of Kosovo fully accepted the legal stance of the first instance and second instance court regarding the rejection of the claimant's statement of claim, because the challenged judgments do not contain any essential violation of the provisions of the contested procedure, for which this court takes care ex officio, nor any other essential violation invoked by the claimant in her revision...”

Applicant's Allegations

29. The Applicant initially lists a number of violations of the Law on Contested Procedure, the Law on Primary and Secondary Education and the Law on Labour.
30. The Applicant alleges that the regular courts did not have the right to question the MEST decisions and that the Applicant's reference in the court proceedings violated the rights guaranteed by Articles 4 [Form of Governance and Separation of Power], 24 [Equality Before the Law] and 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution.

31. The Applicant considers that the decisions of regular courts „...denied the right to the administrative procedure finalized in all its stages ... such as the right to work”.
32. The Applicant requests the Court to approve a „request for the protection of constitutionality and legality and annuls the judgments as unconstitutional:
 - I. Judgment C. No. 152/2009 of the Municipal Court in Lipjan of 8 December 2009,
 - II. Judgment Ac. No. 1545/2012 of the Court of Appeal in Prishtina of 16 June 2014, and
 - III. Judgment Rev. No. 264/14 of the Supreme Court of Kosovo of 4 November 2014.”
33. At the same time, the Applicant requested the Court to recognize her right based on MEST Decision No. 76/2006 and that the Court obliges the municipal authority to execute this decision.

Assessment of the Admissibility of the Referral

34. The Court will examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
35. The Court refers to Article 113.7 of the Constitution, which provides:

“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”.
36. The Court also notes Article 48 of the Law, which states that:

“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”.
37. In addition, the Court reminds Rule 36 (2) (b) of the Rules of Procedure, which reads that:

(2) The Court shall reject 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 “.
38. The Court notes that the Applicant has based the Referral on violations of the Law on Contested Procedure, the Law on Primary and Secondary Education and the Law on Labour. Therefore, the Court finds that these are issues of legality and not of constitutionality.

39. Moreover, the Court notes that the same claims were filed by the Applicant in the proceedings before the Supreme Court, which by Judgment Rev. No. 264/14 of 4 November 2014 provided a reasoned response to the Applicant's claims as to the application of the pertinent rules of the procedural and substantive law.
40. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See case *García Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
41. Further, the Court considers the Applicant's allegations that "*MEST decisions are final*" and that the regular courts by not executing MEST decisions have denied the Applicant's "... *right to administrative proceeding...*" as well as "... *right to work*".
42. With respect to the abovementioned allegation of the Applicant, the Court concludes that these allegations are not correct and are in contradiction with the documentation that the Applicant submitted to the Court.
43. From the documents submitted to the Court, it follows that the administrative procedure was not finalized by MEST Decision No. 76/2006, as alleged by the Applicant, but by IOBK Decision No. 1685/2007 which rejected the Applicant's appeal with the reasoning that "*the employment authority acted based on the employment contract, fulfilling its contractual obligations to her ...*".
44. The Court notes that the Applicant is mainly unsatisfied with legal qualification of the facts and the law applied by the regular courts. The legal qualification of the facts and applicable law are issues of legality.
45. The Applicant has not provided any *prima facie* evidence for a violation of her constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision as to the admissibility of application No. 53363/99, of 31 May 2005).
46. Although the Applicant claims that her rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, she has not indicated how the challenged decisions have violated her constitutional rights.
47. The Court further reiterates, that the mere fact, that the Applicant is dissatisfied with the outcome of the proceedings in her case, does not give rise to an arguable claim of a violation of her rights as protected by the Constitution (See *mutatis mutandis*, ECHR Judgment No. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, of 26 July 2005).
48. The Applicant was provided with numerous opportunities to present her case and to challenge the interpretation of the law, as erroneously interpreted before IOBK in the administrative procedure, before the Municipal Court in Prishtina, the Court of Appeal and the Supreme Court.

49. The Court, after having examined the proceedings in their entirety, does not find that the pertinent proceedings are in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application No. 17064/06 of 30 June 2009).
50. The Court considers that the admissibility requirements have not been met. The Applicant has failed to point out and substantiate the allegations that her constitutional rights and freedoms have been violated by the challenged decision.
51. It follows that the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 23 July 2015, 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Arta Rama-Hajrizi

