



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

Prishtina, 25 May 2015
Ref. no.: RK798/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI157/14

Applicant

Hajriz Alidemaj

**Constitutional Review of
Decision C. no. 1579/2014, of the Municipal Court in Prishtina,
of 8 September 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Hajriz Alidemaj with residence in Prishtina (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges Decision [C. no. 1579/2014] of the Municipal Court in Prishtina, of 8 September 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated 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 of the Republic of Kosovo (hereinafter: the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 20 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 6 November 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Artta Rama-Hajrizi and Kadri Kryeziu.
7. On 8 December 2014, the Court informed the Applicant about the registration of the Referral.
8. On 16 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

9. From 1 September 1981 until 31 August 2003, the Applicant was employed as a Professor of the Albanian language in the school "28 November" in Prishtina. After 31 August 2003, the Municipality of Prishtina transferred the Applicant from one school to another, changing in this way his basic salary.
10. The Applicant addressed his situation several times to the Ministry of Education of Kosovo and the Municipality of Prishtina. However, he has not received any response.
11. On 6 June 2006, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the Decision of the Municipality of Prishtina on these reassignments and changes of the basic salary.
12. On 21 March 2007, the IOBK [Decision A 02 114/2006] approved the Applicant's appeal. In the reasoning of its decision, the IOBK stated:

„The Board based on the evidence presented in the case file concluded that the Appellant's request in relation to the degree of earnings is grounded and should be approved, while the request to be reinstated to the former job position depends on the needs of the employing authority on the basis of work organization and systematization of employees“.

13. On 24 January 2011, the Applicant requested execution before the Municipal Court in Prishtina, seeking to be reinstated to the previous working place,.
14. On 17 November 2011, the Municipal Court in Prishtina [Judgment C. no. 122/2011] approved the Applicant's claim and obliged the Municipality of Prishtina- Directorate of Education and Science to reinstate the Applicant to the working place as a Professor of the Albanian language in the school "28 November" in Prishtina, with all rights deriving from the employment relationship, and the payment of difference of personal income for the period from 1 September 2003 until 30 September 2011.
15. The Municipality of Prishtina filed an appeal with the Court of Appeal against the Judgment of the Municipal Court.
16. On 13 May 2014, the Court of Appeal [Decision Ac. no. 3142/2012] annulled the Judgment of the Municipal Court and remanded the case to the Basic Court for retrial.
17. In the reasoning of its decision, the Court of Appeal stated:

„The first instance court in the repeated procedure will eliminate all aforementioned, so that it will determine ex officio the timeliness of the statement of claim, bearing in mind that the decision of the Independent Oversight Board is dated 21.03.2007, while the claim is submitted to this court on 24.01.2011, and after assessment it will render fair and lawful decision.“
18. On 8 September 2014, the Municipal Court [Decision C. no. 1579/2014] rejected the Applicant's appeal as out of time, reasoning:

„With administered evidence, the court found that the claimant filed the claim on 24 January 2011. On 21 March 2007, he was served with the Decision whereby his employment relationship was terminated. The prescription time limit for all requests from the employment relationship, is within three years from the date when the Claim was filed, while the claimant was retired on 21 March 2007, whereas he filed the claim on 24 January 2011, after three years and nine months“.
19. On 10 December 2014, the Applicant filed an appeal with the Court of Appeal against the Decision of the Municipal Court [C. no. 1579/2014]. The procedure before the Court of Appeal is still in progress.

Applicant's Allegations

20. The Applicant considers that the Municipality of Prishtina violated his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of Kosovo.

21. The Applicant requests the Court:

“the continuation of payment, in a retroactive manner, of the salary as a Professor of the Secondary School, not the salary as a teacher of the Primary School (...) and reinstatement to my previous working place as a professor of Albanian language”.

Assessment of the Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

23. In this respect, 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.”

24. The Court also refers to Article 47. 2 of the Law, which provides:

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

25. Moreover, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which foresees:

„The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted“.

26. In that respect, the Court recalls that the Applicant claims that the Municipality of Prishtina violated his right to work and exercise profession guaranteed by Article 49 of the Constitution of Kosovo.

27. The Court notes that, on 10 December 2014, the Applicant filed an appeal with the Court of Appeal and the proceedings are still pending.

28. The Court reiterates that the principle of subsidiarity requires that the Applicant exhausts all the legal remedies provided by the law.

29. The rationale for the exhaustion rule is to afford competent authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order

provides an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

30. Therefore, the Court considers that the Applicant's Referral is premature, as all available remedies have not been exhausted yet, in accordance with Article 113 (7) of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

31. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law on Constitutional Court and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 25 May 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 on the Constitutional Court;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani