



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

Prishtina, on 19 December 2016
Ref. No.:RK1020/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI164/15

Applicant

Sadat Lekiqi

**Constitutional review of Judgment ARJ – UZVP. No. 22/2015 of the
Supreme Court of Kosovo of 30 July 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is Sadat Lekiqi, residing in Gadime e Ulët, Municipality of Lipjan.

Challenged Decision

2. The Applicant challenges Judgment ARJ – UZVP. No. 22/2015 of the Supreme Court of Kosovo of 30 July 2015 in connection with Judgment A.A.nr.24/2015 of the Court of Appeals of 9 March 2015, Judgment A.nr.494/2013 the Basic Court of 13 November 2014 and Decision no. 682/2013 of Independent Oversight Board for Civil Service of Kosovo 18 March 2013,
3. The Judgment of the Supreme Court was served to him on 2 September 2015.

Subject Matter

4. The subject matter is the constitutional review of the challenged judgments and decision, which, according to the Applicant, violates his rights under Article 7 [Values], Articles 21 [General Principles], Article 22 [Direct Applicability of International Agreements], Article 24 [Equality Before the Law], Article 31 [The Right to a Fair and Impartial Trial], Article 32 [The Right to Legal Remedies], Article 41 [The Right to Access to Public Documents], Article 49 [The Right to Work and Exercise Profession], Article 54 [Judicial Protection of Rights], Article 102 [General Principles of the Judicial System], of the Constitution in conjunction with Articles 6 and 14 of the European Convention on Human Rights (hereinafter: ECHR).

Legal Basis

5. The Referral is based on Article 113 [Jurisdiction and Authorized Parties], paragraph 7, of the Constitution, Article 47 [Individual Requests] of 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

6. On 31 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) which was registered on the same day under number No. 164/15.
7. On 22 January 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 11 February 2016, the Applicant submitted additional allegations in support of his Referral.
9. On 28 July 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
10. On 2 November 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur to replace Judge Robert Carolan. The composition of the Review Panel remained unchanged.

11. On 16 November 2016, 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

12. On an unknown date in 2010, the Secretariat of the Kosovo Judicial Council (hereinafter: the KJC) published Vacancy Announcement 13/2010, for the job position "Executive Clerk" at some municipal courts. As to the duration of the employment contract, the Vacancy Announcement read: "These job positions are published for a fixed time limit of 2 years from the date when the employment relationship is established."
13. Within the legal time limit, the Applicant applied for the job vacancy at the Municipal Court in Ferizaj as well as for the one at the Municipal Court in Prishtina.
14. On 9 December 2010, the Applicant was invited by the KJC for an interview for the job position at the Municipal Court in Ferizaj.
15. On 24 December 2010, the Applicant was interviewed for the vacancy at the Municipal Court in Prishtina, while, on 10 January 2011, he was notified by the KJC that he had not been selected for the position at the Municipal Court in Ferizaj.
16. On 24 June 2011, the Applicant was informed that, on 27 June 2011, he could start working in the job position in Municipal Court in Prishtina for which he had been interviewed on 24 December 2010.
17. On 27 June 2011, the Applicant concluded the employment contract and started to work in the job position for a probationary period of 3 months.
18. After the end of the probationary period, the Applicant received the appointment letter of 30 September 2011 from the KJC for the position of a non-career civil servant, valid until 31 December 2012.
19. On 19 December 2012, the Applicant received the Decision No. 03/118-930 from the Office of the Director of the KJC terminating his employment as of 31 December, as "he established fixed term employment relationship, from 27 June 2011 until 31 December 2012".
20. On 31 December 2012, the Applicant submitted a complaint to the Disputes Grievances Appeal Committee of the KJC, complaining that he had been treated unfairly, since the termination decision had breached the requirements of the vacancy announcement No. 13/2010 of 10 November 2010 by not extending the employment relation to 2 full years.
21. Due to the fact that the Disputes and Grievance Appeal Committee did not review the Applicant's complaint (administrative silence), the Applicant addressed a complaint, dated 21 February 2013, to the Independent Oversight

Board for Civil Service of Kosovo (hereinafter: IOBCSK), arguing that he had been treated unfairly and requesting the Board to annul the Decision of the KJC and to oblige it to assign him to the job position he was holding before being dismissed.

22. On 18 March 2013, by Decision no. 682/2013, the IOBCSK ruled that the Applicant's complaint was ungrounded and that the appeal allegation that he had been treated unfairly by the employment body, by not extending the employment relation to 2 years was ungrounded. The IOBCSK also stated that the Applicant had willingly signed the appointment act wherein the terms and duration of work were mentioned and, upon signing the appointment act, he had the right to file a complaint and not sign the contract.
23. The IOBCSK further reasoned that the Applicant's request to be transferred to a career civil servant position was ungrounded, *inter alia*, since the transfer of civil servants from a fixed term position to an indefinite term position was done only, if a new vacant position was open.
24. Thereafter, the Applicant submitted an administrative appeal to the Basic Court in Prishtina, requesting the annulment of the IOBCSK's Decision no. 682/2013.
25. On 13 November 2014, by Judgment [A. nr. 494/2013] the Basic Court rejected the Applicant's request to annul the IOBCSK's decision and to remand the case for retrial and reconsideration, as ungrounded.
26. The Applicant appealed against the Judgment of the Basic Court to the Court of Appeals, challenging the legality of the Judgment due to erroneous and incomplete ascertainment of the factual situation, erroneous application of legal provisions and erroneous application of procedural provisions.
27. On 9 March 2015, by Judgment [A. A. nr. 24/2015] the Court of Appeals rejected the statement of claim of the Applicant as ungrounded, considering that, based on the evidence administered, it was undoubtedly ascertained that the employment relationship of the parties was established and ended pursuant to the conditions set out in the appointment act, to which both parties had agreed.
28. On 9 March 2015, the Applicant submitted a request for extraordinary review by the Supreme Court against the judgment of the Court of Appeals.
29. On 30 July 2015, by Judgment [ARJ-UZVD. Nr. 22/2015] the Supreme Court rejected the request as ungrounded, stating that it had "*reviewed the case files and, after assessing the challenged judgment, in accordance with Article 53 of the Law on Administrative Conflicts, had found that the request was ungrounded.*"

Applicant's allegations

30. The Applicant alleges violations of his rights under the Constitution, namely Articles 7 [Values], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality before the Law], 31 [Right to Fair and Impartial Tribunal], 32 [Right to Legal Remedies], 41 [Right of Access to Public Documents], 49 [Right to Work and Exercise Profession], 54 [Judicial Protection of Rights], and 102 [General Principles of the Judicial System], and 103 [Organization and Jurisdiction of Courts] and Articles 6 and 14 of ECHR in conjunction with Article 22 of the Constitution.
31. Furthermore, the Applicant lists a number of alleged violations of Law on Access to Public Documents, Law on Civil Service, Law on Labour, Law on the IOBCSK, Law on Courts, Law on Administrative Conflicts, and Law on Contested Procedure.
32. As to the judgments of the Court of Appeals [A.A.nr.24/2015] and Basic Court [A.nr.494/2013] the Applicant alleges that *"the Applicant requested judicial protection before the regular courts, through legal remedies, but did not find professional assessment by the courts when reviewing and assessing the Applicant's allegations."*
33. As to the judgment of the Supreme Court [ARJ-UZVD. Nr.22/2015], the Applicant alleges that *"the Supreme Court only prescribed the reasoning of the lower instance courts and nothing more, despite the fact that the violations of individual rights and freedoms guaranteed by the Constitution further increased."*

Admissibility of the Referral

34. The Court first has to examine whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
35. 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."*
36. The Court also refers to Article 48 [Accuracy of the Referral] of the Law, which foresees:

"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 recalls Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, which provides:

“(1) *The Court may consider a referral if:*

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.”

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that

[...]

d) the Applicant does not sufficiently substantiate his claim.”

38. The Court observes that the Applicant basically claims that the Supreme Court became “*responsible for violation of human rights and freedoms, as it had the legal and constitutional authorization for the elimination of violations committed by the lower instance courts as well as by the administrative authorities.*” In support of his claim, the Applicant refers to his rights under the provisions of the Constitution and the ECHR as well as under the Kosovo laws.
39. The Applicant also requests the Court to determine the unrecoverable damage which the termination of the contract caused to him from a professional point of view and from the point of view of career-building as well as the material damage.
40. In sum, the Applicant challenges the interpretation of the way in which the regular courts determined the length of his employment terms and the way in which they applied the administrative procedure provisions and the substantive law. This interpretation was given by the regular courts in three instances and their conclusion was reached after detailed examination of all the arguments presented by the Applicant.
41. The Court further notes that the Applicant repeats before the Court the same arguments as he filed in the proceedings before the regular courts, in particular, regarding the establishment of the factual situation and the legality of the regular courts’ decisions.
42. However, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
43. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GCL, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-1).

44. In other words, the Court is not a fact-finding Court and the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts.
45. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as “fourth instance court” (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*, Case KI86/11, Applicant *Milaim Berisha*, resolution on Inadmissibility of 5 April 2012).
46. As to the present case, the Court recalls that the Basic Court in Prishtina, by Decision A.no.494/2013 of 13 November 2014, assessed “*the legality of the challenged decision in accordance with Article 44 of the LAC [Law on Administrative Conflicts] and the evidence administered in the main hearing session and found that the statement of claim of the Claimant [the Applicant] was ungrounded.*”
47. This factual situation determined by the Basic Court and the reasons given for Judgment [A.nr.494/2013] was approved as fair by the Court of Appeals, while the Supreme Court ruled that it had “*reviewed the case files and after assessing the challenged judgment [of the Court of Appeals] in accordance with Article 53 of the Law on administrative Conflicts found that the request for extraordinary review was ungrounded.*”
48. The Applicant was, thus, given the opportunity at all stages of the proceedings to submit arguments and evidence which it considered relevant for his case.
49. The Court, therefore, considers that all the arguments of the Applicant that were relevant for the resolution of the dispute, were duly heard and duly examined by the regular courts, that the material and legal reasons for the decision challenged by the Applicant were presented in detail and that the proceedings before the regular courts, viewed in their entirety, were fair.
50. In these circumstances, the Court considers that the admissibility requirements have not been met.
51. Therefore, the Court concludes that the Referral is manifestly ill-founded and has to be declared inadmissible, on a constitutional basis, in accordance with Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

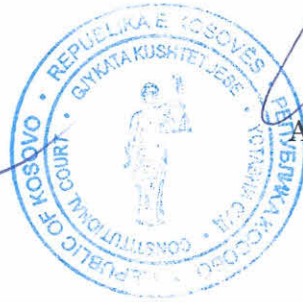
The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, in the session held on 16 November 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi