



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

Prishtina, on 25 November 2016
Ref. No.:RK1005/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI05/16

Applicant

Gani Govori

**Constitutional review of Judgment Rev. no. 222/2015 of the Supreme
Court of Kosovo, of 19 August 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 Referral was submitted by Gani Govori from Prishtina (hereinafter: the Applicant), who is represented by Hamdi Podvorica, lawyer from Prishtina.

Challenged decision

2. The Applicant requests the constitutional review of Judgment Rev. no. 222/2015 of the Supreme Court of Kosovo of 19 August 2015.
3. The challenged decision was served on the Applicant on 30 September 2015.

Subject matter

4. Subject matter is the constitutional review of the challenged decision, which according to the Applicant's allegations, violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 49 [Right to Work and Exercise Profession], and 51 [Health and Social Protection] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 11 January 2016, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
7. On 12 February 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
8. On 1 March 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 20 October 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. From 1984 until 2000, the Applicant was employed at the Self-governing Community of Interest for Pension and Disability Insurance of Kosovo (hereinafter: BVI) in the position of archivist.
11. With the establishment of the interim administration of UNMIK in Kosovo, based on Regulation 2000/10 the Administrative Department of Health and Social Protection in Kosovo (hereinafter: Administrative Department) was established, then for the purposes of this Department was announced the vacancy for certain working places.

12. The Applicant applied for one of the working places and after the selection was finished, on 7 November 2000, he was notified that he was not hired in that position.
13. On 3 March 2001, the Applicant filed an appeal with the Municipal Court in Prishtina against the selection process of employees.
14. On 12 December 2006, the Municipal Court in Prishtina [Judgment C1. no. 71/2003] rejected the Applicant's appeal.
15. Against Judgment [C1. no. 71/2003] of the Municipal Court in Prishtina the Applicant filed an appeal with the District Court in Prishtina.
16. On 30 November 2010, the District Court in Prishtina [Decision Ac. no. 48/2008] approved the Applicant's appeal, annulled the first instance Judgment [C1. no. 71/2003] and remanded the case to the first instance court for retrial.
17. On 14 March 2012, the Municipal Court in Prishtina in the repeated proceedings [Judgment C. no. 2591/10] rejected the Applicant's appeal as ungrounded. The reasoning of the Judgment of the Municipal Court, *inter alia*, reads:

„[...] Upon the establishment of the new institutions after the arrival of the international administration in Kosovo, employees and former employees were given the opportunity to compete on equal terms for the positions that could be analogue to the positions in the pre-war institutions. However, in the formal legal sense the competitors were also equal pursuant to item 6 of Administrative Instruction 02/2002 of the Ministry of Labor and Social Welfare.“

18. The Applicant filed an appeal against Judgment [C. no. 2591/10] of the Municipal Court in Prishtina with the Court of Appeal.
19. On 29 December 2014, the Court of Appeal [Judgment Ac. no. 4052/2012] rejected the Applicant's appeal and upheld Judgment [C. no. 2591/10] of the Municipal Court in Prishtina.
20. The Applicant, against Judgment [Ac. no. 4052/2012] of the Court of Appeal, filed a request for revision with the Supreme Court.
21. On 19 August 2015, the Supreme Court [Judgment Rev. no. 222/2015] rejected the request for revision of the Applicant and upheld in entirety the judgments of the lower instance courts. In the reasoning of the Judgment, the Supreme Court, *inter alia*, stated:

„The Department of Health and Social Welfare Administration was established with the new institutions based on Regulation no. 2000/10 in response to the management and administration of health and social welfare in Kosovo, which is not the successor of any institution of Kosovo from the pre-war period. This means that this

Department is not the successor of BVI for the Pensions and Invalidity Insurance of Kosovo, therefore the respondent's obligation to extend the claimant's employment relationship is not grounded. Recruitment of new personnel for the established institutions was completed through the competition procedure pursuant to the legal rules applicable for the civil servants in Kosovo. The claimant participated in this competition but was not hired. Therefore, any submission in the revision pertaining to the erroneous application of the substantive law is inadmissible."

Applicant's allegations

22. The Applicant alleges violation of the right to equality before the law, fair and impartial trial, protection of property, the right to work and exercise profession, as well as the right to health and social protection.
23. The Applicant considers that the reasoning in the judgment of the Supreme Court is ungrounded and untenable.
24. The Applicant requests the Court to hold that the listed violations of the Constitution of the Republic of Kosovo were committed to the detriment of the Applicant and to declare invalid the Judgment Rev. no. 222/2015, of the Supreme Court of Kosovo, of 19 August 2015 and remand the Judgment to the Supreme Court for reconsideration in accordance with the Judgment of the Constitutional Court.

Admissibility of the Referral

25. The Court first examines whether the Applicant's Referral has met the admissibility requirements provided by the Constitution, and further specified in the Law and Rules of Procedure.
26. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

"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 48 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."

28. The Court also takes into account Rule 36 (1) (d) and (2) (b) 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:*

[...]

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

29. The Court recalls that the Applicant alleges a violation of the right to equality before the law, fair and impartial trial, protection of property, the right to work and exercise profession, as well as the right to health and social protection.
30. The Applicant alleges that the violation occurred due to an ungrounded and untenable reasoning in the judgment of the Supreme Court and in the judgments of the lower instance courts.
31. The Court notes that the Applicant did not provide any procedural or substantive reasoning to support his Referral. He only mentions some articles of the Constitution related to the abovementioned rights, without further explaining how and why the alleged constitutional violation occurred.
32. The mere fact that the Applicant is not satisfied with the outcome of the proceedings, does not mean that he can raise a successful and admissible request, alleging the violation of his/her rights protected by the Constitution and the ECHR.
33. Accordingly, the Court notes that the Supreme Court and other regular courts rejected as ungrounded the Applicant's appeal, because the Administrative Department is not the BVI successor, and, therefore it is not an obligation of the Administrative Department to extend the employment relationship to the Applicant or to give priority to him in the selection process. Accordingly, based on the selection process, the Applicant was not hired to the working place.
34. In fact, the Court notes that the Supreme Court and other regular courts provided a clear reasoning and precise conclusions based on the factual situation as determined in the court proceedings. On the other hand, the Applicant did not explain how and why his rights were violated by the Judgment of the Supreme Court.
35. The Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating violation of his rights guaranteed by the Constitution (See, case No. KI19/14 and KI21/14 Applicants *Tafil Qorri and Mehdi Sylja*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013).
36. Moreover, the Court considers that in the conducted proceedings nothing indicates that the proceedings before the regular courts were unfair or arbitrary, or that human rights or freedoms guaranteed by the Constitution have been violated to the Applicant. Therefore, the Court finds ungrounded the reference to the violation of the Constitution.

37. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and it is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

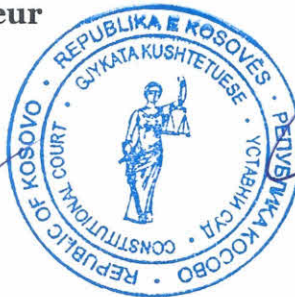
The Constitutional Court, in accordance with Article 113 1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and 2 (b) of the Rules of Procedure, in the session held on 20 October 2016, unanimously

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

