



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

Prishtina, 22 January 2015
Ref.no.: RK751/15

RESOLUTION ON INAMDISSIBILITY

in

Case No. KI129/14

Applicant

Faik Azemi

**Constitutional review of
Decision Rev. no. 270/2013 of the Supreme Court of Kosovo
dated 4 February 2014**

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

Applicant

1. The Referral is submitted by Mr. Faik Azemi from Prishtina (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Decision Rev. No. 270/2013 of the Supreme Court of Kosovo dated 4 February 2014. The challenged decision was served on the Applicant on 20 March 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision which allegedly “*violates his right to a fair and impartial trial*”.

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 the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 13 August 2014, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 5 September 2014, the President of the Court by Decision No. GJR. KI129/14 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI129/14 appointed the Review Panel composed of judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 16 September 2014, the Court notified the Applicant about the registration of the referral and asked him to submit evidence on the date of service of the challenged decision. On the same date, a copy of the Referral was sent to the Supreme Court of Kosovo.
8. On 25 September 2014, the Applicant submitted additional documents with the Court.
9. On 7 October 2014, the Basic Court in Prishtina was asked to submit evidence pertinent to the date of service of the challenged decision on the Applicant.
10. On 10 October 2014, the Basic Court in Prishtina submitted the requested evidence.
11. On 25 November 2014, 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 29 December 2008, the Municipal Court in Prishtina (Judgment C1.no. 515/2007) approved the Applicant’s statement of claim that his employment

relationship was terminated unlawfully and ordered the Municipality of Prishtina to recognize all the rights enjoyed by the Applicant for the period of 1 October 2003 until 31 December 2007 as a Secretary of High School of Agriculture “Avdyl Frashëri” in Prishtina.

13. On 23 November 2011, the Municipal Court in Prishtina (Judgment C. no. 1816/2009) obliged the Municipality of Prishtina to pay to the Applicant the unpaid salaries for the period 1 October 2003 until 31 December 2007 including the interest rate.
14. On 25 June 2012, the Municipal Court in Prishtina rejected as inadmissible the complaint filed by the Municipality of Prishtina due to non-payment of the judicial taxes.
15. On 12 August 2013, the Court of Appeals of Kosovo (Decision CA. no. 3581/2012) rejected as ungrounded the appeal of the respondent party Municipality of Prishtina and upheld the Decision (C. no. 1816/09) of the Municipal Court in Prishtina.
16. On 9 October 2013, the Basic Court in Prishtina (Decision E. no. 1220/2013) allowed the enforcement of the decision. The Municipality of Prishtina filed an objection against that enforcement decision. The Basic Court rejected as ungrounded the objection.
17. On an unspecified date, the Municipality of Prishtina filed a revision with the Supreme Court of Kosovo thereby challenging Decision (CA. no. 3581/2012 of 12 August 2013) of the Court of Appeals of Kosovo...
18. On 4 February 2014, the Supreme Court of Kosovo (Decision Rev. no. 270/2013) approved the revision filed by the Municipality of Prishtina, quashed the decision of the Court of Appeals of Kosovo and remanded the case for retrial.
19. The Supreme Court of Kosovo reasoned:

“It results by the case file that the respondent paid the court fees for the appeal submitted against the judgment of the Municipal Court in Prishtina, C. no. 1816/2009 dated 23.11.2011, on 04.06.2012, which is also confirmed by the payment order with fiscal no. 600365226. This payment order was with the second instance court, in its case file. The warning on payment of the court fee of the respondent by the Municipal Court in Prishtina was sent on 02.05.2012, which was served on the respondent on 04.05.2012, whereas the final warning was received by the respondent on 01.06.2012. Pursuant to Article 3, 2, item (c) of Administrative Direction on Unification of Court Fees No. 2008/02, it is provided that the claimant shall be provided a date by which the amount is to be paid. According to the final warning on payment of the fee for the respondent, the timeframe was 7 days. Given that the respondent received the final warning on 01.06.2012, and that the commitment payment order on behalf of court fee on appeals was done by the respondent on behalf of Kosovo Judicial Council on

06.06.2012, means that the transfer of the amount on behalf of court fee was done on timely manner.

In this legal matter, the Court of Appeal must assess the overall appealed allegations of the respondent and then render a meritorious decision regarding the appeal of the respondent”.

20. On 8 April 2014, the Court of Appeals of Kosovo by Decision AC. no. 3779/13 rejected the appeal of the debtor Municipality of Prishtina and upheld Decision E. no. 1220/13 of the Basic Court in Prishtina dated 12 November 2013.

Applicant’s allegations

21. The Applicant claims that: *“... the Decision of the Supreme Court violates the right to a fair and impartial trial of article 31 of the Constitution and articles 6.5, 6.6, and 6.7 of the Administrative Instruction 2008/02 on unification of judicial taxes”.*
22. The Applicant alleges that: *“... the Decision of the Supreme Court violates the right to a fair trial because the lower instance courts have rejected the appeal of the respondent party for non-payment of judicial taxes”.*
23. Furthermore, the Applicant requests the Court to quash the decision of the Supreme Court of Kosovo and to oblige the Basic Court and the Court of Appeals of Kosovo to enforce Decision no. 3581/2012 as well as the enforcement order E. no. 1220/2013 dated 30 April 2014.

Admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
25. In this respect, the Court refers to Article 113 of the Constitution which establishes:

“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.”

26. The Court also refers to Article 49 of the Law which provides:

“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.”.

27. The Court further takes into account Rule 36 (1) c) of the Rules of Procedure which establish:

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

*...
(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant...”.*

28. The Court notes that the Applicant challenges the Supreme Court decision which was served on him on 20 March 2014. The deadline of four months expired on 20 July 2014. The Referral was submitted to the Court on 13 August 2014.
29. Therefore, the Court considers that the Referral was submitted after the four months deadline prescribed by Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure
30. Moreover, the Court notes that the Applicant was given an opportunity to explain why the referral was not submitted within the legally prescribed deadline. In spite of the Court’s request, he has not provided any explanation.
31. Consequently, the referral is out of time and must be declared inadmissible in accordance with Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 25 November 2014, unanimously

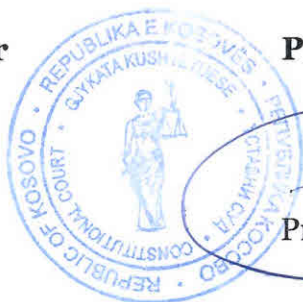
DECIDES

- 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;
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani