



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

Prishtina, 19 January 2015
Ref. no.:RK 746/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI141/14

Applicant

Rrahim Ramadani

**Constitutional review of
Decision CA. no. 2862/2014 of the Court of Appeal of Kosovo
of 26 August 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.

Applicant

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

Challenged decisions

2. The Applicant challenges Decision CA. no. 2862/2014 of the Court of Appeals of Kosovo of 26 August 2014. The challenged decision was served on the Applicant on 4 September 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision CA. no. 2862/2014 of the Court of Appeals of Kosovo of 26 August 2014.

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 18 September 2014, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 7 October 2014, the President of the Court by Decision No. GJR. KI141/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI141/14 appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 22 October 2014, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo.
8. On 9 December 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

9. The Applicant has worked as teacher of Albanian language over 30 years in several schools in Kosovo; however, due to reforms in the education system of Kosovo his contract was not extended.
10. On 14 December 2007, the CEO of the Municipality of Prishtina decided not to extend the Applicant's work contract (Decision no. 07-24385).
11. On an unspecified date the Applicant filed a complaint with the Independent Oversight Board of Kosovo (hereinafter, the IOBK).
12. On 19 June 2008, the IOBK by Decision A. 02. 139. 2008 invalidated the abovementioned decision of the Municipality of Prishtina and obliged the same body to allow the Applicant to realize all the rights deriving from the work

contract in compliance with decisions of the Ministry of Education, Science and Technology.

13. On an unspecified date the Applicant, as creditor, filed a request for enforcement of the IOBK decision with the Basic Court in Prishtina.
14. On 20 March 2014, The Basic Court in Prishtina by Decision E.nr.2433/2011 approved the Applicant's request to enforce the IOBK decision.
15. On an unspecified date the Municipality of Prishtina as debtor filed an objection with the Basic Court in Prishtina against enforcement of the IOBK decision.
16. On 16 June 2014, the Basic Court in Prishtina by Decision E.nr.2433/2011 rejected as unfounded the objection of the Municipality of Prishtina filed against the decision of the same court which approved enforcement of the IOBK decision.
17. On 4 July 2014, the Municipality of Prishtina filed an objection with the Court of Appeal of Kosovo against the above stated Decision of the Basic Court in Prishtina.
18. On 26 August 2014, the Court of Appeal of Kosovo by Decision CA. no. 2862/2014:
 - i) approved the request of the Municipality of Prishtina;
 - ii) changed the Decision of the Basic Court in Prishtina (E. nr. 2433/2011, 19.6.2014); and,
 - iii) rejected the Applicant's proposal for enforcement as ungrounded.
19. In the above stated decision, the Court of Appeal of Kosovo further reasoned that:

“The second instance court assesses that the first instance court, when applying the procedure, without any legal basis permitted the enforcement based on the proposal of the Creditor Rrahim Ramadani from Prishtina, against the Debtor Municipality of Prishtina, because the proposal on enforcement was not based on an eligible document for enforcement in terms of Article 27 paragraph 1 of the LEP. Based on the case files, it results that the first instance court permitted the enforcement based on the decision of the Independent Oversight Board of Kosovo, A02, 139, 2008, of 19 June 2008, wherein the amount of money that the Debtor has to pay to the Creditor on behalf of damage compensation, caused as a consequence of dismissal from work, was not specified. Since in the present case, the request of the Creditor is not a joint request with the request for reinstatement to work, but for damage compensation due to dismissal from work, in this case the legal requirements under Article 315 of the LEP on permission of enforcement have not been fulfilled. The legal stance of the first instance court, expressed in the appealed decision is assessed by the

second instance court as legally ungrounded, because, in such a case, the first instance court should have rejected the proposal on enforcement as ungrounded, since it lacks the grounds on permitting the enforcement, because the proposal was not based on an eligible document for enforcement, in terms of legal provisions under Articles 27 paragraph 1, and 29 paragraph 3 of the LEP”.

Applicant’s allegations

20. The Applicant alleges that the Court of Appeal of Kosovo has unfairly quashed decisions of the Basic Court and the IOBK respectively because it did not take into account time-limits to file an appeal and that IOBK decisions are final.
21. Furthermore, the Applicant asks the Court to: *“... be assigned to the work place in accordance with my qualification; to be paid 13 salaries, from 1 September 2007 until 30 September 2008, and the difference of the salary that I receive currently...”*
22. The Applicant does not invoke violation of any constitutional provision in particular.

Assessment of admissibility

23. 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.
24. 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.”

25. The Court also refers to Article 48 of the Law which provides;

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.

26. The Court further takes into account Rule 36 (2) (d) of the Rules of Procedure which establish:

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;

27. In the concrete case, the Court notes that the Applicant alleges that: *“the Court of Appeal unfairly quashed the Decision of the Basic Court”* and that the: *“Municipality of Prishtina filed an appeal after time limit of seven days*

provided for an appeal". Moreover, the Applicant requests, *inter alia*, to: "be assigned to the work place in accordance with my qualification".

28. The Court considers that the Applicant's referral does not raise constitutional questions, but rather it raises questions of law and of fact which pertain to the duties and prerogative of the regular courts conferred upon them by the Constitution.
29. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
30. 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*, *García Ruiz v. Spain [GC]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
31. Furthermore, the Court considers that the Court of Appeal of Kosovo rendered a well reasoned decision because it explained the legal and factual deficiencies of the decisions rendered by the Basic Court in Prishtina and the IOBK respectively, in addition to providing legal grounds to back up its conclusions.
32. The Constitutional Court recalls that it is not a fact-finding Court. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
33. Moreover, the Referral does not indicate that the Court of Appeal of Kosovo acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
34. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
35. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution

because the facts presented by him do not show in any way that the Court of Appeal of Kosovo had denied him the rights guaranteed by the Constitution.

36. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS


The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rules 36 (2) (d) of the Rules of the Procedure, in its session held on 9 December 2014, unanimously

DECIDES

- I. TO DECLARE the Referral as 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 immediately effective.

Judge Rapporteur

President of the Constitutional Court


Robert Carolan




Prof. Dr. Enver Hasani