



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

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Prishtina, 14 April 2015  
Ref. no.: RK 787/15

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI159/14**

Applicant

**Elife Murseli**

**Constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 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 was submitted by Ms. Elife Murseli (hereinafter: the Applicant) from village Doganaj, Municipality of Kaçanik, who is represented by lawyer Mr. Rifat Abdullahi from Ferizaj.

## **Challenged decision**

2. The Applicant challenges Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014, which was served on the Applicant on 4 August 2014.

## **Subject matter**

3. The subject matter is the constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014, which according to the Applicant's allegations violated Articles 31 (Right to Fair and Impartial Trial) and 49 (Right to Work and Exercise Profession) of the Constitution of the Republic of Kosovo.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 24 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, by Decision no. GJR. KI159/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI159/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 10 November 2014 the Court notified the Applicant and the Court of Appeal of Kosovo of the registration of Referral.
8. On 11 February 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of the facts**

9. On 16 December 2008 by Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik it was ordered that the Applicant's employment relationship in the work place Director of the Center for preschool education "Agimi" in Kaçanik be terminated as of 15 December 2008.
10. Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik, of 16 December 2008, was upheld by Decision 01 no. 8550/08 of the Appeals Committee of the Municipality of Kaçanik, of 5 February 2009.

11. On 6 February 2009 the Applicant filed a complaint with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik, of 16 December 2008, and Decision 01 no. 8550/08 of the Appeals Committee of the Municipality Kaçanik, of 5 February 2009.
12. On 21 April 2009 IOBK by Decision no. 794/09 approved the Applicant's complaint and quashed Decision 01 no. 8467/08 of 16 December 2008 and Decision no. 01. 8550/08 of the Appeals Committee of the Municipality of Kaçanik, of 5 February 2009.
13. By IOBK Decision no. 794/09 of 21 April 2009, paragraph II of the enacting clause, the Municipality of Kaçanik was ordered the following *"Director of the Education and Culture Department, Head of Administration and Staff in the Municipality of Kaçanik is obliged to reinstate the Appellant to the work position as Director of the "Agimi" Pre-school Education Center in Kaçanik and compensate to her the personal income in a retroactive manner, from 15 December 2008 until the Employing Authority repeats the vacancy announcement, and the entire interviewing procedure and the selection of the candidate on the basis of merit are conducted, pursuant to Decision No. 782/09 of the IOBK, of 15 April 2009, within the time limit of 15 (fifteen) days from the date of receipt of this decision"*.
14. On 21 September 2010 the Applicant filed a proposal with the Municipal Court in Kaçanik to allow the execution of IOBK Decision No. 794/09 of 21 April 2009.
15. On 17 January 2011 the Municipal Court in Kaçanik by Decision E. no. 390/2010 rejected as inadmissible the proposal to allow the execution of the IOBK Decision.
16. On 28 June 2011 the District Court in Prishtina, by Decision Ac. no. 89/2011, upheld Decision E. no. 390/2010 of the Municipal Court in Kaçanik.
17. The State Prosecutor of Kosovo timely filed a request for protection of legality against Decision E. no. 390/2010 of the Municipal Court in Kaçanik, of 17 January 2011, and Decision Ac. no. 89/2011 of the District Court in Prishtina, of 28 June 2011, due to erroneous application of the substantive law, proposing that both abovementioned decisions be quashed and the case be remanded to the first instance court for retrial.
18. On 16 January 2013, based on minutes no. 19/2013 of handover of duty, the Municipality of Kaçanik executed the IOBK Decision no. 794/09 and reinstated the Applicant to the work place Director at the Center for preschool education "Agimi" in Kaçanik.
19. On 3 June 2013 the Supreme Court of Kosovo, by Decision MLC. no. 2/2012, approved the request of the State Prosecutor of Kosovo as grounded and quashed Decision Ac. no. 89/2011 of the District Court in Prishtina, of 28 June 2011, and Decision E. no. 390/2010 of the Municipal Court in Kaçanik, of 17 January 2011, and the case was remanded to the first instance court for retrial.

20. On 4 March 2014 the Basic Court in Ferizaj - Branch in Kaçanik, by Decision no. 269/13, decided as follows:

*I. The Proposal for execution filed by the Creditor- Elife Murseli, from "Doganaj" Village, Municipality of Kaçanik, is partially APPROVED as grounded, and the Debtor- the Municipality of Kaçanik is OBLIGED to pay to the Creditor the amount of € 6.522.35, with the same interest rate as the money deposited in the bank without specific destination, for more than one year, starting from 01 January 2009 until 16 January 2013, for the unpaid salaries,.*

*II. The amount of €9.351,30 is REJECTED as ungrounded, because the Creditor has already received this amount, and also her request for reinstatement to the work place she previously had, is rejected as UNGROUNDED.*

*III. Objection of the Debtor- Municipality of Kaçanik, Education and Culture Department, filed on 01 June 2009 against the Decision E. no. 229/09 on allowing the execution, dated 15 May 2009, is REJECTED as ungrounded.*

*IV. The Debtor is OBLIGED to pay to the Creditor the costs of executive proceedings in amount of €927, which shall be made in the bank account of the authorized person of the Creditor, which number is: 1170172318000108 in ProCredit Bank in Ferizaj, and all these payments shall be made within a time limit of 7 days from the day this decision becomes final“.*

21. The creditor filed an appeal against this decision within legal time limit due to essential violation of contested procedure provisions, erroneous and incomplete determination of factual situation and violations of the provisions of the Law on Contested Procedure, with the proposal to approve the appeal as grounded.
22. On 5 May 2014 the Court of Appeals of Kosovo, by Decision AC. no. 1235/2014, rejected the Applicant's appeal and upheld Decision E. no. 269/2013 of the Basic Court in Ferizaj - Branch in Kaçanik, of 4 March 2014, reasoning:

*“The Court of Appeals finds that the first instance court acted correctly when, upon presenting the evidence by the financial expertise of 26 December 2013, whereby the amounts belonging to the Creditor- Elife have been certified, it partially approved her Proposal for execution as grounded, and obliged the Debtor- Municipality of Kaçanik to pay to her the amount of €6.522,35, for the unpaid salaries, with an interest rate equal to that of the deposited money in bank without specific destination for more than one year, from 1 January 2009 until 16 January 2013 and to also pay the contribution in the Pension Trust, by rejecting as ungrounded the amount of €9.351,30 (from which, the net amount of the entire compensation in amount of 15.873,65 Euro for the contested period from 1 January 2009 until 16 January 2013, was deducted), with correct determination and reasoning according to which the Creditor has realized this amount from the Debtor, as a delegate of the Municipal Assembly*

*(during the time she was out of the employment relationship), together with her request for reinstatement to the work she previously had, since the Debtor was reinstated to work by the Debtor itself, therefore this request is unsubstantial, hence, all the appealed allegations of the Creditor result as ungrounded and not substantiated by anything.“*

23. The Applicant submitted two decisions of the IOBK No. 02/370/2013 of 20 November 2013 and No. A/02/46/2014, of 17 April 2014 as evidence that the process of appointment of the Director of the Center for preschool education "Agimi" - Kaçanik has not been finalized.

### **Applicant's allegations**

24. The Applicant alleges that *“the stance of the regular courts that according to the notification from the Debtor, the Creditor was reinstated to work on 16 January 2013 and that the request for reinstatement to work is unsubstantiated, is not legally grounded, and it is essentially an erroneous stance, because the reinstatement to work, pursuant to the Decision of the IOBK would last until a final decision on the selection of the candidate for the Director of “Agimi” PEC in Kaçanik would be rendered, and not as it has been acted against the Creditor in which case the selection of the Director had not been completed yet, while she was forcefully dismissed from the job position. It is worth mentioning that by the decision of the President of the Municipality, the duration of validity of that decision is not even mentioned”.*
25. The Applicant further alleges that *„as regards the rejection of the Creditor's request for the payment of the amount of €9.351,30, the Applicant considers that by the court decisions, Article 65 of the Law on Local Self-Government has been erroneously applied, because the Creditor was unlawfully dismissed from work position as Director of PEC, and then, as an unemployed person, she was entitled to be elected as delegate in the Municipal Assembly. Therefore, as regards the rejection of the payment of this amount, the abovementioned courts have violated the law as regards the payment of the amount for unpaid salaries, the rights that were violated by the challenged decisions of the regular courts”.*
26. The Applicant requests from the Constitutional Court the following:

*“I. TO DECLARE the Referral admissible.*

*II. TO HOLD that the Article 31 (Right to Fair and Impartial Trial), Article 49 (Right to Work and Exercise Profession, and the rights to compensation of unpaid salaries) of the Constitution of the Republic of Kosovo, have been violated.*

*III. TO ANNUL the Decision Ac. no. 1235/14 of the Court of Appeal of Kosovo, of 5 May 2014 and the Decision E. no. 269/13 of the Basic Court in Ferizaj, Kaçanik Branch, of 04 March 2014, in the paragraph II of the enacting clause.*



*IV. TO OBLIGE the Municipality of Kaçanik to reinstate the Creditor- Elife Murseli, to work as Director of the “Agimi” PEC in Kaçanik in order to act as Director until the vacancy announcement for that job position is published and the procedure is conducted until a final decision on the selection of the candidate for Director of PECK and to pay to the Creditor retroactively the unpaid salaries from 01 October 2013 until the Director of “Agimi” PEC in Kaçanik shall be finally selected in lawful proceedings, pursuant to Decision No. 794/2009 of the IOBK of 21 April 2009.*

*V. TO OBLIGE the Municipality of Kaçanik to pay to the Creditor the amount of €9.351,30 for the amount of salaries unpaid from 01 January 2009 until 16 January 2013”.*

### **Admissibility of the Referral**

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

28. 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”.*

29. The Court refers also 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.”*

30. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

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

*...*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights “.*

31. Considering the Applicant’s allegations in relation to the request for reinstatement to the work place, the Court notes that IOBK Decision No. 794/09 of 21 April 2009 obliges the Municipality of Kaçanik “to reinstate the Applicant to the work position of Director of the Centre for preschool education „Agimi“ in Kaçanik, and to compensate personal income in a retroactive manner from 15.12.2008, until the employment authority re-advertises the vacancy announcement”.

32. The Municipality of Kaçanik, based on Minutes No. 19/2013 of handover of duty of 16 January 2013, acted in compliance with the IOBK Decision no. 794/09, by reinstating the Applicant to the job position of Director at the Center for preschool education "Agimi" in Kaçanik.
33. This factual situation was determined by Decision E. no. 269/13 of the Municipal Court in Ferizaj - Branch in Kaçanik, of 4 March 2014.
34. Considering the Applicant's allegations for the rejection of the property claim regarding the payment of the amount of €9.351.30, and the allegation that in the present case, in the court decisions was erroneously applied Article 65 of the Law on Local Self-Government, the Constitutional Court emphasizes that the Constitutional Court is not a court of appeal, which reviews the decisions taken by regular courts.
35. The role of the regular courts is to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, the European Court of Human Rights [ECHR] 1999-I).
36. Decision AC. no. 1235/2014, of the Court of Appeals of Kosovo, of 5 May 2014, and Decision E. no. 269/13, of the Municipal Court in Ferizaj - Branch in Kaçanik, of 4 March 2014, in their detailed reasoning, responded to the Applicant's allegations regarding the request for reinstatement to the work place and the property claim in the amount of €9.351,30, and give reasons for the application of the respective rules of both procedural and substantive law. The Applicant repeats these allegations before the Constitutional Court too.
37. The Court notes that the Applicant does not challenge IOBK decisions No. 02/370/2013, of 20 November 2013 and No. A/02/46/2014 of 17/04/2014, but he has attached these two IOBK decisions as evidence that the process of the appointment of director at the Center for preschool education "Agim" in Kaçanik has not been yet finalized.
38. As the constitutionality of these decisions has not been challenged by the Applicant, the Court considers that the constitutional review of these IOBK decisions is not the subject matter before the Constitutional Court and it will not conduct a review of their constitutionality.
39. The Constitutional Court reiterates that the Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutional rights (see, *Vanek v. Republic of Slovakia*, ECHR Decision on the admissibility of the application, no. 53363/99, of 31 May 2005.).
40. In the present case, the Applicant was afforded opportunities to present her case and challenge the interpretation of the law which she considers as being incorrect, before the IOBK, the Municipal Court in Ferizaj - Branch in Kaçanik, the Court of Appeals of Kosovo in Prishtina and the Supreme Court of Kosovo.
41. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or

arbitrary (see, *mutatis mutandis*, *Shub v Lithuania*, ECHR Decision on the admissibility of application, no. 17064/06, of 30 June 2009).

42. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decisions.
43. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) b) of the Rules of Procedure, in its session held on 14 April 2015, 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**

**President of the Constitutional Court**

Ivan Čukalović



Prof. Dr. Enver Hasani