



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

Pristina, 18 march 2011
Ref. No.:88 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 44/10

Applicant

Gafur Podvorica

VS

Ministry of Labor and Social Welfare

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Ivan Čukalović, Judge
Snezhana Botusharova, Judge
Gjylieta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Gafur Podvorica from Prishtina, residing at "Halil Orana" I lam III. No. 4, in Prishtina and Director of the Department of the Institute for Social Policy.

Opposing party

2. The opposing party is the Ministry of Labor and Social Welfare (MLSW) in Prishtina.

Subject matter

3. The subject matter is the assessment of the constitutionality of the Decision of the MLSW [*Decision of the MLSW, No. 89, dated 23.04.2010*], which as of 01.05.2010 dissolves the Department of the Institute for Social Policy as a special organizational structure within the Ministry of Labour and Social Welfare

Alleged violations of constitutionally guaranteed rights

4. The Applicant did not explicitly specify what rights guaranteed by the Constitution have been violated

Legal Basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as the Law), and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules).

Proceedings before the Court

6. On 23 June 2010, the Applicant submitted the Referral to the Court.
7. On 26 August 2010, the Court sent a copy of the Referral to the Ministry and requested a response. On 8 October 2010, the Court received the Ministry's reply.
8. On 14 December 2010, the Review Panel consisting of Judges Robert Carolan (Presiding), Snezhana Botusharova and Gjyljeta Mushkolaj considered the report of the Judge Rapporteur Almiro Rodrigues and made a recommendation to the Court on the inadmissibility of the Referral.

Applicant's allegations

9. On 23.06.2010, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo complaining that the Minister of Labor and Social Welfare in Prishtina has unlawfully decided to suppress the Institute of Social Policy (hereinafter referred to as ISP) [*Article 4, paragraph 1 of the Law No. 02/L provides for the existence and functions the Institute of Social Policy*] and, by undertaking this action, the Ministry has committed a constitutional violation.

Comments of the opposing party

10. On 26 August 2010, the notification on the registration of the case and the request to reply has been sent to the opposing party. On 08.10.2010, the MLSW sent its reply justifying the challenged Decision with FRIDOM (Functional Review and Institutional Design of Ministries) recommendation on the functional revision in the MLSW

Summary of the facts

11. On 23 April 2010, the Ministry of Labor and Social Welfare decided [*Decision No. 89/10, item I (one), dated 23.04.2010*] that:

“The Department of the Institute of Social Policy, as a special organizational structure that functions and operates within the Ministry of Labor and Social Welfare shall be suppressed as of 01.05.2010.”
12. That decision was issued pursuant to FRIDOM recommendations for the functional revision in the MLSW [*See the functional revision report in MLSW and Recommendation III.5: to merge the ISP into the Department for Social and Family Policies, page 15*].
13. As soon as the report was made public, more precisely on 11.11.09, the director of the Institute of Social Policy of the MLSW sent a memo to the MLSW Committee reviewing the FRIDOM Report, contesting the Report as being unreasonable, inconsistent with the scope of Department of Institute for Social Policy and in contradiction with the applicable law which regulated the status and the scope of the Department of Institute for Social Policy.
14. On 13.05.2010, the Office of the Prime Minister for Legal Support Services sent [*Through the document with Ref. No. 122/2010*] to the ISP director a legal opinion concluding that the “Institute shall have the status of a Department”, “the status of this Institute can be changed through the amendment of the Law No.02/L-17 on Social and Family Services” and “the Ministry of Labour and Social Welfare can (...) propose a regular procedure for a draft law amending the Law No.02/L-17 on Social and Family Services”
15. On 19.05.2010, the ISP Director sent [*Registered under No. 01/104/10*] to the Minister of the MLSW the legal opinion of the Office of the Prime Minister, requesting from the Minister to review the decision for the suppression of the ISP.
16. On 14.06.2010, the Permanent Secretary of the MLSW requested [*Through the document No. 159/4/10*] the ISP Director, “to undertake all actions for the implementation of this decision” and informing that “negligence or deliberate actions related to the non-implementation of the aforementioned decision will not be tolerated, and for that reason measures in conformity with the applicable provisions shall be initiated”.
17. Finally, on 23.06.2010, the Applicant addressed to the Constitutional Court, requesting the assessment of the constitutionality of the challenged act.

Assessment of admissibility

18. The Court needs to preliminarily assess if the Applicant has met the admissibility conditions set forth by the Constitution.

In reference to this, Article 113.1 of the Constitution stipulates that ***“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”*** and Article 113.7 of the Constitution stipulates that ***“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."

19. On the other side, Article 46 of the Law on the Constitutional Court stipulates that

"The Constitutional Court receives and processes a referral submitted in accordance with Article 113, Paragraph 7 of the Constitution, if it determines that all legal requirements have been met".

20. The submitted documents do not show that the Applicant is an "an authorized party", either as a citizen or as a Director of the Institute for Social Policy.

21. In fact, firstly the Applicant does not show that "his individual rights and freedoms, guaranteed by the Constitution, have been violated by public authorities" This is a basic condition to refer a case to the Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo. The Applicant lacks active legitimacy or locus standi to refer this case to the Constitutional Court. Therefore, the Court shall declare the referral inadmissible [*See mutatis mutandis Convention (Municipal Section of Antilly v. France (dec.), no. 45129/98, ECHR 1999-VIII)*].

22. Secondly, the Applicant does not directly specify either any constitutional provision that could have been violated by the decision he is challenging without being able to prove "the status of the victim of the public authority's act" as it is foreseen in article 34 of the EU Convention for Protection of Human Rights [*See mutatis mutandis Lindsay v. the United Kingdom, no. 31699/96, Commission decision of 17 January 1997, 23 E.H.R.R. Agrotexim and Others v. Greece, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72; Ltd, Ukraine, no. 70297/01, § 28, 18 October 2005; Loyka (dec.), no. 54811/00, 13 December 2005)*]

23. Accordingly, the Applicants' Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 20 of the Law on the Constitutional Court and Rule 56 (2) of the Rules of Procedure, unanimously,

DECIDES

I. TO REJECT the referral as inadmissible.

This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court.

The Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues

President of the Constitutional Court

Prof. Dr. Enver Hasani

