



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

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Prishtina, on 7 March 2016  
Ref. no.:RK917/16

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI45/15**

Applicant

**Elizabeta Arifi-Deliu**

**Constitutional review of Judgment ARJ-UZVP. No. 13/2014 of the  
Supreme Court of 30 September 2014**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
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 Ms. Elizabeta Arifi-Deliu (hereinafter: the Applicant), residing in Prishtina.

## **Challenged Decision**

2. The challenged decision is the Judgment of the Supreme Court, ARJ-UZVP. No. 13/2014, of 30 September 2014, by which the Applicant's request for extraordinary review against the Judgment of the Court of Appeal (AA. no. 1/2014 of 25 March 2014) was rejected as ungrounded.
3. The challenged decision was served on the Applicant on 22 December 2014.

## **Subject Matter**

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which the Applicant alleges that it violated her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair hearing] of the European Convention on Human Rights (hereinafter: ECHR).
5. In addition, the Applicant requests the assessment of constitutionality of the Decision (No. A 02/175/2012, of 27 July 2012) of the Independent Oversight Board of the Kosovo Civil Service (hereinafter: IOB) and the assessment of constitutionality of the "*Final Ranking of Candidates (the first 30 candidates) dated 20 April 2012 at the Kosovo Police given the composition of the Selection Committee.*"

## **Legal Basis**

6. The Referral is based on Article 113 (7) of the Constitution, Article 47 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**

7. On 17 April 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 2 June 2015 the President of the Court, by Decision No. GJR. KI45/15, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI45/15, appointed the Review Panel composed of Judges: Almiro Rodrigues (presiding), Ivan Čukalović and Bekim Sejdiu.
9. On 10 June 2015 the Court informed the Applicant of the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court and the IOB.
10. On 10 June 2015 the Court requested from the Basic Court in Pristina to submit a copy of the letter of receipt, which shows when the Applicant was served with

the Judgment of the Supreme Court, ARJ-UZVP. No. 13/2014, of 30 September 2014.

11. On 29 June 2015 the Court received the requested letter of receipt from the Basic Court in Pristina indicating that the Applicant was served with the aforementioned Judgment of the Supreme Court on 22 December 2014.
12. On 1 July 2015 by Decision No. K.SH. KI45/15 on replacement of the Judge Rapporteur, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur.
13. On 8 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of Facts**

14. On 15 December 2011 the Kosovo Police announced thirty (30) employment vacancies for the position of Administrative Assistant, for which position the Applicant applied.
15. Upon completion of all testing procedures, the Applicant was informed that she was not on the list of thirty (30) candidates selected for the position of Administrative Assistant.
16. On 3 May 2012 the Applicant filed a complaint with the Recruitment and Selection Unit of the Kosovo Police (hereinafter: the Recruitment and Selection Unit) for not being on the list.
17. On 18 June 2012 the Recruitment and Selection Unit notified the Applicant that her complaint was rejected as ungrounded.
18. On 6 July 2012 the Applicant appealed to the IOB against the decision of the Recruitment and Selection Unit.
19. In her appeal the Applicant alleged that during the final selection process the commission established for the selection of candidates violated the provisions of the legislation in force concerning civil service recruitment.
20. On 27 July 2012 the IOB (Decision, A. No. 02/175/2012) rejected the Applicant's appeal as ungrounded.
21. The IOB concluded, after reviewing all the evidence submitted by the parties, that the recruitment procedures and the final selection of candidates was conducted in accordance with the Law on Civil Service of Kosovo and Regulation 02/2010 for the procedures on Recruitment in Civil Service.
22. On 7 September 2012 the Applicant filed a claim with the Supreme Court of Kosovo. In her claim, the Applicant alleged that the Recruitment and Selection Unit acted in violation of the Civil Service Law of Kosovo, the Law on

Prevention of Conflict of Interest and that during the recruitment procedure she was discriminated against.

23. The Applicant's claim was referred to the Basic Court in Prishtina, Department for Administrative Cases (hereinafter: the Basic Court) following the entry into force of the Law on Courts (1 January 2013) as the competent authority in the administrative procedure to hear the Applicant's claim became the Basic Court instead of the Supreme Court.
24. On 1 July 2013 the Basic Court (Decision, A. No. 1032/12, of 1 July 2013) asked the Applicant for additional evidence.
25. On 9 July 2013 the Applicant provided the Basic Court with the requested supplementation and sought the annulment of the Decision of IOB (A. No. 02/175/2012) and compensation of damages due to prevention of employment.
26. On 10 October 2013 the Basic Court (Judgment A. No. 1032/2012) rejected the Applicant's claim as ungrounded.
27. After reviewing the presented evidence, the Basic Court found that the IOB correctly ascertained the factual situation and applied the provisions of administrative procedure and of the substantive law. In its Judgment, the Basic Court further held that based on the assessment of the Court, the Selection and the Recruitment Unit acted in compliance with the Law and ranked those candidates who had fulfilled the conditions and criteria for the advertised position.
28. On 27 November 2013 the Applicant filed an appeal against the Judgment of the Basic Court (A. no. 1032/2012, of 10 October 2013) alleging violations of the substantive law, incomplete and erroneous assessment of the factual situation, and violations of the procedural provisions.
29. On 25 March 2014 the Court of Appeals of Kosovo (Judgment AA. no. 1/2014) rejected the Applicant's appeal as ungrounded and thereby upheld the Judgment of the Basic Court.
30. After assessing the challenged Judgment and administering the evidence, the Court of Appeals of Kosovo found that the first instance court correctly and completely ascertained the factual situation. The Court of Appeals of Kosovo further held that it entirely approved the correct and legally grounded stance of the first instance court because the challenged Judgment was not rendered in violation of the provisions of the substantive law or procedural provisions.
31. Whereas as to the Applicant's allegation regarding the incomplete and erroneous assessment of the factual situation, the Court of Appeals held that the first instance court upon the presented evidence proved that the IOB did not act in violation with the Law on Civil Service.
32. On 6 May 2014 the Applicant filed a request for extraordinary review with the Supreme Court of Kosovo. She requested a review of the Judgment of the Court of Appeals of Kosovo (AA. no. 1/2014 of 25 March 2014) alleging violations of

the substantive law, incomplete and erroneous ascertainment of the factual situation, and violations of the procedural provisions.

33. The Applicant alleged also that during the recruitment procedure she was discriminated against.
34. On 30 September 2014 the Supreme Court of Kosovo (ARJ-UZVP. no. 13/2014) rejected the Applicant's request for extraordinary review as ungrounded.
35. The Supreme Court found that the lower instance courts decided correctly by rejecting the Applicant's request for annulment of the IOB Decision (A. No. 02/175/2012).
36. The Supreme Court in its Judgment considered that "*the recruitment for the Administrative Assistant has been conducted in compliance with Law No. 03/L-149 on Civil Service, Article 2, paragraph 1, and sub-paragraph 1.3 – based on principle of merit and recruitment procedures in compliance with Regulation No. 02 /2010 on the recruitment procedure. Article 11.1 and Article 18.1 foresee that the admission to the Civil Service is based on the principles of merit, open publication of vacancies, transparency in the process, objectivity and impartiality of the testing 'committee, non - discrimination of candidates and equal representation. The Appellant was ranked in the 49<sup>th</sup> (forty ninth) position with 71.15% points, whereas candidates who received 71.95% up to 77.95% points were selected, thus the candidates selected who have fulfilled the required criteria*".
37. The Supreme Court concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decisions.

### **Applicant's Allegations**

38. The Applicant alleges that the Kosovo Police, the IOB and the regular courts violated rights guaranteed by the Constitution, namely Article 7 [Values], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights]. The Applicant further alleges that these public authorities violated her rights guaranteed by the ECHR under Article 6 [Right to a fair trial] and Article 14 [Prohibition of discrimination].
39. Regarding her alleged violations of the Constitution by the regular courts, the Applicant specifies that "*The Supreme Court did not render a reasoned decision, which would demonstrate to me as an appealing party that I have been heard in relation to my complaints [...]*". The Applicant therefore claims that "*[...] the Judgments of the regular courts violated Article 31 [Right to a fair and Impartial Trial in conjunction with Article 6 [Right to a fair trial] of the ECHR*".
40. As to her allegations regarding discrimination, the Applicants claims that she has "*filed appeals with the Courts also due to discrimination as pregnant woman, provided by Article 14 [Prohibition of Discrimination] of the ECHR, on the basis of any other personal status. The employment finalized in June*

*2012, whereas I gave birth to the child on 28 July 2012. The regular Courts should have treated it in a specific manner the fact that I physically appeared before the Commission, and I earned less points than in the written test, unlike other candidates”.*

### **Admissibility of the Referral**

41. In order to be able to adjudicate the Applicant’s Referral, the Court has to assess whether the Applicant has met the necessary requirements for admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.
42. The Court notes that the Applicant is an authorized party according to the Constitution, challenges an act of a public authority, namely the Judgment of the Supreme Court, has exhausted the necessary legal remedies and has submitted her referral within the four (4) months period after receiving the judgment.
43. The applicant has clearly stated the allegedly violated constitutional rights and freedoms and the challenged act as required by 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”.*

44. Further, the Court is to assess whether the Applicant has met the required Rules of Procedure, namely 36 (2), which provide:

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

*(a) the referral is not prima facie justified, or*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*

*(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*

*(d) the Applicant does not sufficiently substantiate his claim”.*

45. The Court notes that in addition to Applicant’s request to review the constitutionality of the Judgment of the Supreme Court, the Applicant in her Referral also requests the assessment of constitutionality of the Decision of the IOB and the Decision on “*Final Ranking of Candidates (the first 30 candidates) dated 20 April 2012 at the Kosovo Police given the composition of the Selection Committee*”. In this respect, she alleges violation of Article 24 and Article 31 of the Constitution.

46. The Court notes that the Applicant raised the same allegations concerning violations of the Civil Service Law, Law on Prevention of Conflict of Interest and that she was discriminated against during the administrative proceedings with the first and second instance courts. Her allegations were addressed by the respective courts and reasoned accordingly.
47. In her request for extraordinary review filed with the Supreme Court she alleged violations of substantive and procedural law and erroneous and incomplete ascertainment of the factual situation and that during the recruitment procedure she was discriminated against. Thus, the Court considers that the Judgment of the Supreme Court addressed and decided on aforementioned allegations, which were already raised before the first and second instance courts. Therefore, the Judgment of the Supreme Court is now the final decision on the contested subject matter.
48. In relation to the Applicant's allegation that she was discriminated against, the Basic Court and the Court of Appeal held that the recruitment procedure was held in accordance with the principles of the Civil Service established in the Law on Civil Service. Furthermore, the Supreme Court in its Judgment confirmed that the recruitment procedure was conducted in compliance with the Law in force and that it was based "*on the principles of merit, open publication of vacancies, transparency in the process, objectivity and impartiality of the testing committee, non - discrimination of candidates and equal representation.*"
49. The Court holds that the Applicant has not presented any facts nor has she sufficiently substantiated her allegation about discrimination. When alleging such a constitutional violation, the Applicant must present a reasoned allegation and convincing argument.
50. As far as the Applicant's allegation that the regular courts did not render reasoned decisions, the Court refers to the final decision of the Supreme Court, which in its Judgment concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decision.
51. In addition, she also alleges that Supreme Court did not render a reasoned Decision "*which would demonstrate to me as an appealing party that I have been heard in relation to my complaints [...]*," thus violating Article 31 of the Constitution and Article 6 of the ECHR.
52. In this relation, the Court notes that the Applicant has not sufficiently substantiated her claim on violation of Article 31 of the Constitution and Article 6 of the ECHR. Furthermore, the Court considers that the Supreme Court in its Judgment addressed the essential issues raised in the Applicant's request for extraordinary review. In this regard, the Court also refers to the jurisprudence of the European Court of Human Rights which held that Article 6 does not require a detailed answer to be provided to every argument put to the court during the course of the proceedings (See case *Van de Hurk v. the Netherlands*, App. No. 16034/90, ECtHR, Judgment 19 April 1994, par. 61)

53. Thus, the Court holds that the reasoning given in the Judgment of the Supreme Court is clear, and after having considered all the proceedings, the Court finds that the proceedings before the regular courts have not been unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
54. In conclusion, the Court emphasizes that it does not act as a court of fourth instance in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See case *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
55. The Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of her constitutional rights and that the Applicant did not sufficiently substantiate her claim.
56. Therefore, the Referral is manifestly ill-founded and, accordingly, inadmissible.

### FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure, on 8 March 2016, unanimously

### DECIDES

- I. TO DECLARE the Referral 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. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi