



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

Prishtina, 6 November 2015
Ref. No.:RK 856/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI61/15

Applicant

Islam Krasniqi

Constitutional review of Judgment A. A. no. 2/2014 of the Court of Appeals of Kosovo of 21 February 2014

CONSTITUTIONAL COURT OF 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 and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Islam Krasniqi from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment A. A. no. 2/2014, of the Court of Appeal of Kosovo, of 21 February 2014. The challenged Judgment was served on the Applicant on 14 March 2014.

Subject Matter

3. The subject matter is the constitutional review of Judgment A. A. no. 2/2014, of the Court of Appeal of Kosovo, of 21 February 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) 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 13 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 June 2015, the President of the Court by Decision no. GJR. KI61/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI61/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 23 July 2015, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was sent to the Court of Appeal of Kosovo and to the Basic Court in Prishtina. The Court also requested the Applicant and the Basic Court in Prishtina to submit evidence of the date of receipt of the decision challenged by the Applicant.
8. On 24 July 2015, the Basic Court in Prishtina submitted to the Court the evidence (the copy of receipt) showing the date when the challenged judgment was served on the Applicant.
9. On 10 September 2015 the review panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. On 8 February 2010, the Applicant established employment relationship with the Ministry of Internal Affairs of the Republic of Kosovo. Meanwhile, the Applicant was accused by his superiors and by his colleagues of non-performance of his work duties and of misconduct. From the case file it results that he was imposed several verbal and written warnings (No. 574/03, on 4 June 2010, and No. 136/2012, on 9 March 2012) by his superiors.

11. On 10 May 2012, the Disciplinary Committee of the Ministry of Internal Affairs rendered Decision No. 313/12 on termination of the employment relationship between the Applicant, as employee, and the Ministry of Internal Affairs, as employer. The Disciplinary Committee reasoned that the Applicant, despite the written warnings by his superiors, he continued with misbehavior, with non-performance of his work duties, with blackmail and physical threats.

12. The Disciplinary Committee reasoned, among the other:

“Based on different statements and documents sent to different addresses, it can be seen that (the Applicant) has made: slanders, insults, labeling, blackmails against his work colleagues, superiors and the institution where he works, and he did not have any argument to convince the Disciplinary Committee in relation to his allegations”.

13. On an unspecified date, the Applicant complained to the Dispute Resolution and Appeal Commission under the Ministry of Internal Affairs.

14. On 13 June 2012, the Dispute Resolution and Appeal Commission, by Decision no. 422/2012, rejected the Applicant's appeal and upheld the decision of the Disciplinary Committee.

15. On an unspecified date, the Applicant complained to the Independent Oversight Board for Civil Service of Kosovo (hereinafter: IOBK). The Applicant, among others, alleged that his superiors dealt with blackmail and slander, he requested reinstatement without discrimination to his working place and compensation for the difficult conditions and risk that characterized his working place.

16. On 12 July 2012, the IOBK, by Decision No. 1166 - 02/159/2012, rejected the Applicant's appeal and upheld the decisions of the Dispute Resolution and Appeal Commission and of the Disciplinary Committee. The IOBK, among others, reasoned that the Applicant was promoted to the position and salary as a stimulating measure, but despite this he continued with misconduct and non-performance of work duties.

17. The IOBK in the above-mentioned decision, reasoned among other:

“The Board Panel ascertained that: the coefficient of the appellant was increased from 5 to 6, but he has continuously violated the tasks and duties, and due to his conduct, he was imposed verbal and written warnings several times by his supervisors, therefore the S.P., based on Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Article 51, paragraph 4, requests that the appellant becomes the subject of disciplinary measures due to the violation of the provision of Article 56, paragraph 1.4, and based on Article 66, paragraph 4.3, the Disciplinary Committee shall impose the disciplinary measure – termination of the employment relationship in the Civil Service on him, since the more lenient measures given by the supervisors did not have any effect on his improvement”.

18. On an unspecified date, the Applicant filed appeal against the decision of the IOBK with the Basic Court in Prishtina - Department of Administrative Matters. The Applicant alleged that the IOBK rendered unlawful decision without his presence, that only the evidence of the opposing party were reviewed and that he was not given the opportunity to present new evidence.
19. On 22 October 2013, the Basic Court in Prishtina - Department of Administrative Affairs, by Judgment A. no. 892/2012, rejected as ungrounded the Applicant's statement of claim. The Basic Court, among others, reasoned that the IOBK is not obliged to hold a public hearing unless the parties request this in writing.
20. The Basic Court in Prishtina in the abovementioned decision, reasoned among the other:

"... the Court referred to the Regulation No.02/2011 on the Rules and Procedure of Appeal before the Independent Oversight Board for the Civil Service of the Republic of Kosovo, Article 4.2.6, which provides as follows: "The Panel shall review the appeal and render decisions on the basis of proof of the matter. In case of conflict of material fact, or a party requesting, the Board shall authorize the Secretariat to hold a public session.

According to the abovementioned legal provisions, the respondent IOBCSK was not obliged to hold a public session, except only when the parties request such a thing in writing".

21. On 22 November 2013, the Applicant filed appeal with the Court of Appeal of Kosovo. The Applicant complained in essence that the court of fact was biased in taking the evidence and that he had not violated working rules as provided by the decisions of the committees of the Ministry of Internal Affairs and the IOBK.
22. On 21 February 2014, the Court of Appeal of Kosovo, by Judgment AA no. 2/2014, rejected the Applicant's appeal as ungrounded and upheld the decision of the Basic Court in Prishtina. The Court of Appeal characterized the Applicant's allegations as ungrounded, generalized and non-specific.

Applicant's allegations

23. The Applicant requests the Court to declare unconstitutional and unlawful the decisions of the regular courts, of the IOBK and of the disciplinary committees, because the termination of employment constitutes a violation of human rights, discrimination, unfair trial, ban of free speech, ban on access to public documents and violation of the right to career. The Applicant refers to Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], Article 49 [Right Work and Exercise Profession] and Article 55 [Limitation of Fundamental Rights and Freedoms] of the Constitution.

24. The Applicant alleges that he did not appeal to the Supreme Court of Kosovo because of his lawyer's errors and due to the irresponsibility of the Appeal Court of Kosovo.

Assessment of admissibility

25. The Court first examines whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
26. 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”.

27. 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force”.

28. The Court also takes into account Rule 36 1 (c) of the Rules of Procedure, which provides:

“(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...”.

29. The Court considers that in order to realize their constitutional rights the Applicant should exhaust legal remedies before the competent authorities; and only after having taken these actions, i.e. after exhaustion of legal remedies, he may address the Constitutional Court if he deems it necessary and that within the four (4) month time limit prescribed in Article 49 of the Law and further specified in Rule 36 1 (c) of Rules of the Procedure. (See case No. KI91/13, Applicant *Shpend Zajmi, Avni Kryeziu and 19 others*, Resolution on Inadmissibility, of 28 October 2013).
30. In the present case, the Court notes that the Applicant was served with the last challenged decision on 14 March 2014, whereas the Referral was submitted on 13 May 2015, namely 10 (ten) months after the deadline provided by law.
31. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to

challenge (See case *O' Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005 and see, *mutatis mutandis*, Case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).

32. The Court also notes that the Applicant blames his lawyer for not complying with the legal deadline, and for this reason he filed a complaint with the Chamber of Advocates, which, in fact, is not a valid argument for consideration before the Constitutional Court; moreover, when the Appeals Commission of Chamber of Advocates concluded that the Applicants lawyer had not violated his duties or code of ethic that are related to his work as a lawyer.
33. The Court reiterates that the conduct of his lawyer or the authorized representative by the Applicant itself is responsibility of the Applicant. Any procedural action or inaction on the representative's part are in principle attributable to the applicant himself (*Bekauri v. Georgia*, No. 14102/02 ECHR, Judgment of 10 April 2012, §§ 22-25; and see *mutatis mutandis*, Case No. KI02/10, Resolution on Inadmissibility, *Roland Bartzeko, paragraph 25-28, 21 march 2011 and Migliore and Others v. Italy*, No. 58511/13 ECHR, Decision of 27 January 2014).
34. In sum, the Court concludes that the Referral is out of time and is to 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 10 September 2015, unanimously

DECIDES

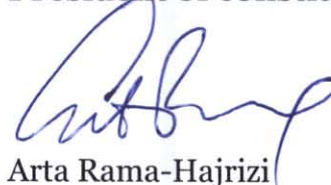
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur


Bekim Sejdiu



President of constitutional Court


Arta Rama-Hajrizi