



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 16 November 2015
Ref. no.: RK 858/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI69/15

Applicant

Enver Krasniqi

**Constitutional review of Decision Rev. No. 305/2014 of the Supreme
Court of Kosovo of 8 December 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, and
Bekim Sejdiu, Judge

Applicant

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

Challenged Decision

2. The Applicant challenges Decision Rev. No. 305/2014 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 8 December 2014, which was served on the Applicant on 18 February 2015.

Subject Matter

3. The subject matter is the constitutional review of Decision (Rev. No. 305/2014) of the Supreme Court, which according to the Applicant's allegations violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and by Article 49 [Right to Work and Exercise Profession].

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 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 29 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. KI69/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI69/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 22 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 13 August 2015 the Court requested from the Basic Court in Prishtina to submit the copy of the receipt, indicating the date when the Decision (Rev. no. 330/2014) of the Supreme Court, of 8 December 2014 was served on the Applicant.
9. On 28 August 2015 the Basic Court in Prishtina submitted the additional document requested by the Court.
10. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. On 26 April 2005 the Ministry of Public Services by Decision (06/2005) appointed the Applicant as Acting Permanent Secretary.
12. On 5 May 2006, the Secretariat of the Senior Public Appointment Committee (hereinafter: SPAC) informed the Applicant that he was elected to the position of Permanent Secretary of the Ministry of Public Services.
13. On 3 July 2006, the Applicant concluded the employment contract (No. 020), to the position of the Permanent Secretary at the Ministry of Public Services, the contract provided that: *the contract becomes valid after the expiration of three month of the probation period*".
14. On 4 August 2006, SPAC by Decision (No. 032/2006) appointed the Applicant to the position of Permanent Secretary at the Ministry of Public Services.
15. On 10 August 2006, the Minister of Public Services and his advisors held a meeting with the Applicant where they pointed out the irregularities in the Applicant's work. Meanwhile at that meeting the Applicant was informed that the Minister will recommend to the SPAC the termination of the employment relationship with the Applicant.
16. On 17 August 2006, the Ministry of Public Services by the recommendation (No. 3111) requested from the SPAC to render a decision on termination of the employment relationship to the Applicant.
17. On 21 August 2006, SPAC by Decision (No. 042/2006) terminated the employment relationship of the Applicant to the position of Permanent Secretary. In paragraph two of this decision is stated that "*the contract concluded between SPAC and the Applicant is terminated during the probation period mentioned in the contract*".
18. On 25 August 2006, the Applicant filed an appeal with SPAC against the Decision (No. 042/2006 of 21 August 2006).
19. On 3 February 2009 the Applicant addressed SPAC by a letter and requested clarification as to why he has not received any answer to his appeal for a period of 2 (two) years.
20. On 17 March 2009, the Applicant filed a lawsuit for compensation of damage and reinstatement to the working place with the Municipal Court in Prishtina.
21. On 25 May 2012, the Municipal Court in Prishtina by Judgment (C No. 565/09) rejected as ungrounded the Applicant's statement of claim with following reasoning:

“... Based on the evidence presented, the Respondent has confirmed the legal basis of termination of employment contract before the expiry of the time limit provided under the contract and based on this, the Court assesses that Decision No. 042/06 of the SPAC, of 21 August 2006, as a body of the Respondent, can be considered as lawful...”

22. On 7 January 2013 the Applicant filed an appeal with the Court of Appeal of Kosovo against the Judgment (C No. 565/09) of the Municipal Court.
23. On 18 April 2014 the Court of Appeal, by Judgment (Ac. No. 796/2013) rejected the Applicant's appeal as ungrounded and upheld Judgment (C no. 565/09) of the Municipal Court with following reasoning:

“... it is the assessment of the Court of Appeals as well that, in the concrete situation, the Employer evaluates the work and performance of the employee, and no legal provisions provides that such a matter shall be carried out by the Court. Since the evaluation of the Minister resulted in failure of the Claimant to properly perform his tasks, then the termination of this employment relationship, without waiting the end of the probation period, was fair...”

24. On 24 June 2014, the Applicant filed a request for revision with the Supreme Court against Judgment (Ac. No. 796/2013), of the Court of Appeal.
25. On 8 December 2015 the Supreme Court by Decision (Rev. No. 305/2014) approved the request for revision as partly grounded, modified Judgment (Ac. No. 796/2013) of the Court of Appeal, and rejected the Applicant's statement of claim as out of time *“for compensation of damage and reinstatement to the working place.”*
26. In its Decision, the Supreme Court held that the Judgment (Ac. No. 796/2013) of the Court of Appeal and Judgment (C No. 565/09) of the Municipal Court were rendered by erroneous application of the substantive law when assessing the Applicant's claim with respect to the deadline of submission of the claim.
27. Moreover, the Supreme Court concluded that the Applicant's claim *“for compensation of damage and reinstatement to the working place”* was not submitted within the prescribed legal time limit.

Applicant's Allegations

28. The Applicant requests the Court to annul the Decision (Rev. No. 305/2014) of the Supreme Court, which violated the right under Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession].
29. The Applicant claims that the Supreme Court erroneously concluded that *“in the present case we are dealing with a labor dispute arising from employment relationship”* and that *“the legal basis of the claim was compensation for the*

damage caused due to unlawful acts of officials of state authorities or bodies thereof and, as a result, upon deciding, the provisions of the LOR, regulating this area, should have been applied”.

Admissibility of the Referral

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

31. In that regard, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

32. 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”.

33. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) 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”.

34. The Applicant alleges that the Supreme Court had erroneously applied the procedural law and that the challenged decision was taken on basis of law on labor, whereas his statement of claim was related to the compensation of damages and it should have been applied the Law on Obligations.

35. In fact, the Applicant argues that such application of the procedural and substantive law have violated the right to fair and impartial trial and the right to work and exercise the profession, as guaranteed by the Constitution.

36. In this regard, the Court notes that these allegations of the Applicant are in contradiction with the documents which the Applicant submitted to the court.

37. From the submitted documentation can be concluded that the Applicant's employment relationship has been terminated by the Decision (No. 042/2006) of SPAC "*within the probationary period specified in the contract*".
38. Moreover, the Court notes that the Supreme Court by Decision (Rev. No. 305/2014) rejected the Applicant's claim as ungrounded and explained in which manner the Applicant should have sought the protection of his right from employment relationship through the judicial way:

"... the Law on Basic Rights from Employment Relationship... it is provided that an unsatisfied employee ... if the competent authority does not render a decision within 30 days from the date of filing the request, i.e. objection, he has the right to seek protection of his rights before the competent court within a time limit of 15 days".
39. The Supreme Court further concluded: "*... that in the present case, the procedural presumptions... due to the fact that the Claimant has not addressed to the Court a request for protection of violated rights, within the legal time limit provided by the provision of Article 83 of the Law on Basic Rights deriving from Employment Relationship. This is based on the fact that the Claimant has filed against Decision No. 1712 on termination of employment relationship, dated 22 August 2006, an appeal with the Senior Public Appointments Committee on 25 August 2006, while the claim for protection of violated rights was filed with the Court on 19 March 2009 (2 years and 7 months after filing the appeal). This is a preclusive time limit, meaning that if it is missed, the right to employment relationship is lost*".
40. From the foregoing, the Court concludes that the Applicant's request for compensation of the damage is based on the applicant rights arising from the employment contract.
41. Considering that the Applicant has failed to prove that his employment contract was terminated in unlawful manner, the applicant's allegations on erroneous application of procedural law and "*unlawful activities of officials of state authorities*" are in contradiction with the documents which the Applicant submitted to the court.
42. The Court notes that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.
43. The Court considers that the proceedings before the Municipal Court, the Court of Appeal and the Supreme Court, have been fair in their entirety and the decisions are thoroughly justified and reasoned, regardless of the different application of procedural and substantive law.

44. Therefore, the Constitutional Court concludes that the proceedings in general and viewed in its entirety have been conducted in such way that the Applicant had a fair trial (see, inter alia, *Edwards v. United Kingdom*, No.13071/97, report on European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
45. In fact the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (see *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred Articles of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
46. Moreover, the Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (see, *mutatis mutandis*, *Garciz Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para.28. see also Constitutional Court case No. Ki70/11, *Applicants Faik Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
47. Therefore, the Court concludes that the Applicant did not substantiate and prove the allegation of violation of the right to fair and impartial trial and the right to work and exercise profession.
48. In sum, the Court considers that, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Applicant's allegations are manifestly ill founded and therefore the Referral is inadmissible.

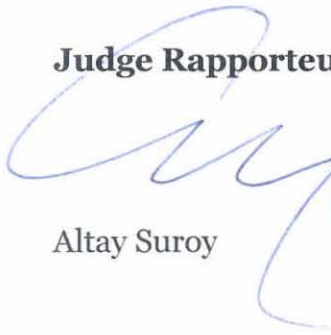
FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law, and Rules 36 (2) (d) of the Rules of Procedure, in the session held on 14 October 2015, 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



Altay Suroy



President of the Constitutional Court



Artta Rama-Hajrizi