



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

Prishtina, 01 november 2011
Ref. No.: RK101/11

RESOLUTION ON INADMISSIBILITY

in

Case No. 72/11

Applicant

Elmi Dragusha

Constitutional review of the Judgment of the Supreme Court of Kosovo
Rev. No. 185/2008 dated 6 January 2011

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
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge
Ilirian Islami, Judge.

The Applicant

1. The Applicant is Elmi Dragusha from the village of Prugovc, Municipality of Obiliq.

Challenged Decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. No. 185/2008, dated 6 January 2011 and served on him on 8 March 2011.
3. In fact, the Applicant claims that “the Supreme Court did not determine the rights according to which should see the contradictions between the material evidences of both parties”.

Legal Basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of Kosovo, dated 16 December 2008 (hereinafter, the “Law”) and Rule 56.2 of the Rules of Procedure.

Proceedings before the Court

5. On 23 May 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, referred to as the “Court”). On 24 May 2011, the Applicant was notified to complete the Referral and, on 2 June 2011, he completed and clarified the Referral.
6. Meanwhile, in completing the Referral, the Applicant, without giving any justification, requested his identity not to be disclosed.
7. On 24 June 2011, the Court informed the Applicant and the involved courts that a procedure has been initiated for review of constitutionality in the case KI 72/11.
8. On 05 October 2011, after having considered the Report of the Judge Almiro Rodrigues, the Review Panel, composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović, recommended to the full Court to reject the Referral as inadmissible.

Summary of the Facts

9. On 11 February 2002, the Centre for Social Welfare in Prishtina (hereinafter “CSW in Prishtina”) announced in the “Koha Ditore” newspaper a job vacancy for the post of Social Services Officer in the Centre for Social Welfare in Obiliq (hereinafter “CSW in Obiliq”), requiring that the candidates should have superior university education.
10. Among other 9 candidates, the Applicant applied for the post. However, after the selection and recruitment proceedings, the Applicant was not hired.
11. The Applicant filed an appeal to the Municipal Court of Prishtina against the Obiliq CSW decision. On 23 January 2003, the Municipal Court of Prishtina rejected the Applicant’s appeal as unfounded.
12. The Applicant filed an appeal to the District Court of Prishtina against the Judgment of the Municipal Court of Prishtina. On 20 May 2005, the District Court of Prishtina annulled the Judgment of the Municipal Court of Prishtina, due to erroneous application of the law and remanded the case for retrial.
13. On 27 February 2007, at retrial, the Municipal Court of Prishtina, again, rejected as unfounded the appeal of the Applicant.

14. The Applicant filed an appeal with the District Court of Prishtina against the second Judgment of the Municipal Court of Prishtina. On 19 November 2007, the District Court of Prishtina rejected as unfounded the Applicant's appeal and upheld the second Judgment of the Municipal Court of Prishtina Cl. No. 192/2005, dated 27 February 200.
15. The Applicant filed with the Supreme Court of Kosovo a request for revision against the Judgment of the District Court of Prishtina. On 6 January 2011, the Supreme Court of Kosovo rejected as unfounded the Applicant's request for revision and upheld the Judgment of the District Court of Prishtina.
16. In the reasoning of the Judgment of the Supreme Court of Kosovo, Rev. No. 185/2008 dated 6 January 2011, the Supreme Court states the following:

"... the minutes on assessment of candidates' capabilities nr.18, dated 15.03.2002, it is established that candidate (...), who has completed the Faculty of Law and who was assessed with 43 points, was admitted. The claimant has completed the Faculty of Philosophy and Sociology and was assessed with 21 point."

"... inferior instance courts' have fairly applied the substantive law when they rejected the claimant's claim, because the decision on admission of the candidate is legal, because the admitted candidate is a Graduated Lawyer and he meet the terms foreseen by the competition..."

Legal arguments presented by the Applicant

17. The Applicant alleges that "the SLC of Obiliq (...) has announced a competition for job position the Official for Social Services for which position it is required to have a respective university qualification and not, as the courts are considering, that it is required a superior university qualification".
18. He further alleges that "from the interpretation that [he] did to the competition it results that duty of the candidate with respective university qualification is to do social analysis, but it is hired the graduated that according to qualification does legal analysis/justifications, what it does not correspond with the duties announced in the competition. In the competition it is required that the candidate should solve social cases, lawyer does not perform these tasks".
19. Therefore, the Applicant considers that the selected person, being a lawyer, "does not fulfill the conditions and his selection was made in violation of the law".
20. In the end, the Applicant concludes that the Judgment of the Supreme Court violated the right to a fair trial, as prescribed in Article 31 of the Constitution.
21. The Applicant also concludes that Article 6.1 of the European Convention on Human Rights was violated (hereinafter the "ECHR"). Article 6.1 of ECHR states:

"In the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time [...]"

22. The Applicant further refers to Article 13 of the ECHR, establishing:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”

23. Therefore, the Applicant requests from the Constitutional Court *“to approve the claim and annul the Supreme Court judgement Revision nr. 185/2008 and District Court judgment Ac. Nr. 588/2007, and case to be returned to the Supreme Court or Municipal Court for retrial”*.

Assessment of the Admissibility of the Referral

24. The Applicant claims Article 31 (Right to a Fair and Impartial Trial) of the Constitution and Articles 6 (Right to a Fair Trial) and 13 (Right to an Effective Remedy) of the ECHR are the basis for his referral.

25. Admissibility requirements are laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.

26. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo states:

“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.”

27. Under the Constitution, the Constitutional Court is not a court of appeal, when considering decisions rendered by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).

28. The Applicant has neither substantiated an allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does not specify why and how Article 31 of the Constitution or Articles 6 and 13 of the ECHR support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

29. The Applicant claims that his rights were violated by the lower courts' erroneous finding of fact and application of law, without specific reference to how these decisions infringed on his constitutional rights.

30. In the present case, the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Municipal, District and Supreme Court. The Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009).

31. In conclusion, the Referral is manifestly ill-founded, pursuant to Rule 36.2(b) of the Rules of Procedure which stipulates that *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:... b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights”*.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2(b) of the Rules of Procedure, at the session held on 5 October 2011, unanimously

DECIDED

- I. **TO REJECT** the Referral as Inadmissible;
- II. 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;
- III. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

