Prishtina, 19 November 2015
Ref. No.: RK 859/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI78/15

Applicant

Fatime Tosuni

Constitutional review of Judgment Rev. no. 318/2014 of the Supreme Court of Kosovo of 19 January 2015

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 Ms. Fatime Tosuni (hereinafter: the Applicant), from Gjilan.

Challenged decision

2. The Applicant challenges Judgment [Rev. no. 318/2014] of the Supreme Court of Kosovo, of 19 January 2015, which was served on her on 8 May 2015.

Subject matter

3. Subject matter of the Referral KI78/15 is constitutional review of Judgment which, allegedly, has violated the rights and freedoms guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on 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 16 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 August 2015, by Decision no. GJR. KI78/15, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision no. KSH. KI78/15, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

7. On 19 August 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. In the period between 4 May 2006 and 30 April 2007, the Applicant established an employment relationship with the Ministry of Internal Affairs (hereinafter: MIA) in the position of the Coordinator of the Municipal Center for Civil Registration (hereinafter: CMCCR). Based on the employment contract no. 02/111/38, the employment relationship was for a definite period of time.

10. During 2006, the Ministry of Internal Affairs issued a new regulation on the change of the internal organizational structure, also covering the job position of the Applicant. According to the new organizational structure, it is foreseen that the incumbent of the position of CMCCR must have a university degree and relevant professional qualifications.

11. On 30 March 2007, the MIA, pursuant to Article 35.1 (b) of UNMIK Regulation 2003/2 On the Civil Service, rendered a Decision [prot. no. 290/01] on termination of the Applicant's employment relationship.

12. In 2007, MIA announced a job vacancy to fill the job position of CMCCR. Following the completion of the selection process, MIA selected a candidate who fulfilled all necessary qualifications provided in the vacancy announcement. The Applicant had not applied for the position.

13. On 17 May 2007, the Applicant addressed MIA in writing, requesting an explanation why her definite-term contract was not extended. There is no evidence in the case file to indicate whether or not MIA responded to the letter of the Applicant).

14. On 6 July 2007, the Applicant filed a complaint with the Independent Oversight Board (hereinafter: IOB), requesting that the decision of MIA [prot. no. 290/01], of 30 March 2007, be annulled.

15. On 5 March 2008, the IOB rendered Decision [no.245.08] which rejected the Applicant's appeal as ungrounded. The IOB reasoned that, *"by Article 35.1 (b) of the AD 2003/2, it was explicitly foreseen as follows: "the employment in the Civil Service shall automatically end on the expiry of the employment contract of the civil servant [...]. It follows that the Employing Authority in the CSK [Civil Service of Kosovo] shall decide for the extension of the employment contract, as it has decided in the present case. The Employing Authority has fulfilled all the bilateral rights to the appellant, which derive from the time limit of the employment contract [...]. In this case, the appellant lacks the adequate qualification for this job position..."*

16. On an unspecified date, the Applicant filed a lawsuit with the Municipal Court in Prishtina against the Government of Kosovo and MIA, requesting the annulment of the Decision [prot.no. 290/01] of 30 March 2007, on termination of her employment relationship, as well as her reinstatement to the working place with all privileges.

17. On 14 March 2012, the Municipal Court in Prishtina rendered Judgment [C1. no. 146/08], which rejected the Applicant's statement of claim as ungrounded, with the reasoning that, *"Following the assessment and analysis of all the evidence, the Court assessed as grounded the respondent's objection when challenging the statement of claim regarding the termination of the employment relationship by referring to the provision of Article 35.1 (b) of the AD no. 2003/2, as grounded, so that the respondent, after the expiry of the contract with the claimant announced the public job vacancy for the challenged job position, while the claimant did not apply. The court found that the respondent has fulfilled its obligations to the claimant at the day when the employment relationship was terminated."*

18. Within the legal deadline, the Applicant filed an appeal with the Court of Appeal against Judgment [C1. no. 146/08] of the Municipal Court, of 14 March 2012, due to erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

19. On 15 April 2014, the Court of Appeal rendered Judgment [Ac. no. 4560/2012], by which it rejected the Applicant's appeal as ungrounded with the reasoning that, *"the challenged judgment does not contain essential violations of the provisions of the LCP, under Article 182, paragraphs 1 and 2, of which this Court takes care ex officio, and at the same time is based of the factual situation, determined completely and correctly, and the substantive law was also correctly applied."*

20. On 12 August 2014, the Applicant submitted to the Supreme Court a request for revision against Judgment [Ac. no. 4560/2012] of the Court of Appeal, of 15 April 2014.

21. On 19 January 2015, the Supreme Court rendered Judgment [Rev. no. 318/2014] which rejected the Applicant's request for revision as ungrounded with the reasoning that, *"The Supreme Court of Kosovo assessed that the lower instance courts have correctly and completely determined the factual situation and correctly applied the substantive law when they found that the claimant's statement of claim is ungrounded ".*

Applicant's allegations

22. The Applicant alleges that Article 49 of the Constitution of Kosovo guarantees the right to work. The right to work as a fundamental human right, which, together with other rights, forms the basis for the legal order of the Republic of Kosovo.

23. The Applicant addresses the Court with the request: *"I expect that the Constitutional Court will render a decision on the admissibility of my appeal so that I may exercise my fundamental right – right to work, guaranteed by the Constitution of the Republic of Kosovo and other international instruments".*

Admissibility of the Referral

24. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. In this respect, Article 113 paragraph 7 of the Constitution 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."*

26. Article 48 of the Law also 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. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which provides:

(1) "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:
[...]
(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights".

28. The Court notes that the Applicant has built her constitutional complaint on an allegation of a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution which states:

Article 49 [Right to Work and Exercise Profession]

1. The right to work is guaranteed.
2. Every person is free to choose his/her profession and occupation.

29. The Court notes that the right to work and exercise profession under Article 49 of the Constitution is subject to protection in the constitutional system of Kosovo, where these rights are further exercised in a manner and under conditions provided by law, and this means the right of an individual that his employment relationship is not terminated contrary to what is determined by law.

30. Having reviewed the case files, the Court notes that the administrative courts, in three instances, in accordance with the law, have examined the merits of the Applicant's allegations and determined the factual situation of importance for rendering of decisions, including also Decision [Rev. no. 318/2014] of the Supreme Court, which is alleged by the Applicant.

31. Furthermore, the Court finds that the decision of the Supreme Court contested by the Applicant does not in any way prevent the Applicant from working or exercising a profession. With its decision [Rev. no. 318/2014], the Supreme Court merely confirmed that the Applicant's specific employment dating from 4 May 2006 until 30 April 2007 had come to an end. This does not in any way prevent or prohibit the Applicant from taking up any other employment which she may choose. As such, there is nothing in the Applicant's claims that justifies a conclusion that her Constitutional right to work has been infringed (see, mutatis mutandis, Resolution on Inadmissibility no. RK734/14, in case KI09/14, of 24 November 2014, paragraph 29).

32. Furthermore, the Court notes that the regular courts based their decisions on Article 35.1. (b) of the Administrative Direction no. 2003/2 on Implementing UNMIK Regulation no. 2001/36 on the Civil Service, which states:

Section 35. Termination of Employment

35.1 Employment in the Civil Service terminates automatically:
[...]
(b) On the expiry of the civil servant's contract of employment.

33. Therefore, in the Court's opinion, the Applicant's allegations that the challenged Judgment violated her right to work and exercise a profession, guaranteed by Article 49 of the Constitution, is only an expression of her subjective assessment of an erroneous determination of the factual situation and erroneous application of the substantive law, but not the real evidence of the committed violation of the rights under Article 49 of the Constitution.

34. The Court reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings, cannot of itself raise an arguable claim for breach of Article 49 of the Constitution (see: case *Mezotur-Tiszazugi Tarsulat vs. Hungary,*, No.5503/02, ECHR, *Judgment of 26 July 2005*).

35. The Court further reiterates that it is not its task under the Constitution to 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).

36. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant did not substantiate that the challenged decision violates her rights guaranteed by the Constitution and the ECHR.

37. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and 2 (b) of the Rules of Procedure, 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 **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi